

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934  
For the Quarterly Period Ended September 30, 2020  
or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934  
For the transition period from            to

**Commission file number:**  
1-6523

**Exact name of registrant as specified in its charter:**  
Bank of America Corporation

**State or other jurisdiction of incorporation or organization:**  
Delaware

**IRS Employer Identification No.:**  
56-0906609

**Address of principal executive offices:**  
Bank of America Corporate Center  
100 N. Tryon Street  
Charlotte, North Carolina 28255

**Registrant's telephone number, including area code:**  
(704) 386-5681

**Former name, former address and former fiscal year, if changed since last report:**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	BAC	New York Stock Exchange
Depository Shares, each representing a 1/1,000th interest in a share of Floating Rate Non-Cumulative Preferred Stock, Series E	BAC PrE	New York Stock Exchange
Depository Shares, each representing a 1/1,000th interest in a share of 6.200% Non-Cumulative Preferred Stock, Series CC	BAC PrC	New York Stock Exchange
Depository Shares, each representing a 1/1,000th interest in a share of 6.000% Non-Cumulative Preferred Stock, Series EE	BAC PrA	New York Stock Exchange
Depository Shares, each representing a 1/1,000th interest in a share of 6.000% Non-Cumulative Preferred Stock, Series GG	BAC PrB	New York Stock Exchange
Depository Shares, each representing a 1/1,000th interest in a share of 5.875% Non-Cumulative Preferred Stock, Series HH	BAC PrK	New York Stock Exchange
7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L	BAC PrL	New York Stock Exchange
Depository Shares, each representing a 1/1,200th interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 1	BML PrG	New York Stock Exchange

1 Bank of America

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Depository Shares, each representing a 1/1,200th interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 2	BML PrH	New York Stock Exchange
Depository Shares, each representing a 1/1,200th interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 4	BML PrJ	New York Stock Exchange
Depository Shares, each representing a 1/1,200th interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 5	BML PrL	New York Stock Exchange
Floating Rate Preferred Hybrid Income Term Securities of BAC Capital Trust XIII (and the guarantee related thereto)	BAC/PF	New York Stock Exchange
5.63% Fixed to Floating Rate Preferred Hybrid Income Term Securities of BAC Capital Trust XIV (and the guarantee related thereto)	BAC/PG	New York Stock Exchange
Income Capital Obligation Notes initially due December 15, 2066 of Bank of America Corporation	MER PrK	New York Stock Exchange
Senior Medium-Term Notes, Series A, Step Up Callable Notes, due November 28, 2031 of BofA Finance LLC (and the guarantee of the Registrant with respect thereto)	BAC/31B	New York Stock Exchange
Depository Shares, each representing a 1/1,000th interest in a share of 5.375% Non-Cumulative Preferred Stock, Series KK	BAC PrM	New York Stock Exchange
Depository Shares, each representing a 1/1,000th interest in a share of 5.000% Non-Cumulative Preferred Stock, Series LL	BAC PrN	New York Stock Exchange
Depository Shares, each representing a 1/1,000th interest in a share of 4.375% Non-Cumulative Preferred Stock, Series NN	BAC PrO	New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐  
Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Exchange Act Rule 12b-2).

Yes ☐ No ☒

On October 29, 2020, there were 8,650,789,694 shares of Bank of America Corporation Common Stock outstanding.

INDEX

**Part I. Financial Information**

<b><u>Item 1. Financial Statements</u></b>	<b><u>Page</u></b>
Consolidated Statement of Income	52
Consolidated Statement of Comprehensive Income	52
Consolidated Balance Sheet	53
Consolidated Statement of Changes in Shareholders' Equity	54
Consolidated Statement of Cash Flows	55
Notes to Consolidated Financial Statements	56
Note 1 – Summary of Significant Accounting Principles	56
Note 2 – Net Interest Income and Noninterest Income	59
Note 3 – Derivatives	60
Note 4 – Securities	67
Note 5 – Outstanding Loans and Leases and Allowance for Credit Losses	70
Note 6 – Securitizations and Other Variable Interest Entities	79
Note 7 – Goodwill and Intangible Assets	82
Note 8 – Leases	82
Note 9 – Federal Funds Sold or Purchased, Securities Financing Agreements, Short-term Borrowings and Restricted Cash	83
Note 10 – Commitments and Contingencies	85
Note 11 – Shareholders' Equity	87
Note 12 – Earnings Per Common Share	88
Note 13 – Accumulated Other Comprehensive Income (Loss)	88
Note 14 – Fair Value Measurements	89
Note 15 – Fair Value Option	96
Note 16 – Fair Value of Financial Instruments	98
Note 17 – Business Segment Information	98
Glossary	103
Acronyms	104
 <b><u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u></b>	
Executive Summary	3
Recent Developments	3
Financial Highlights	5
Supplemental Financial Data	8
Business Segment Operations	12
Consumer Banking	12
Global Wealth & Investment Management	16
Global Banking	18
Global Markets	20
All Other	22
Off-Balance Sheet Arrangements and Contractual Obligations	23
Managing Risk	23
Capital Management	23
Liquidity Risk	27
Credit Risk Management	30
Consumer Portfolio Credit Risk Management	30
Commercial Portfolio Credit Risk Management	37
Non-U.S. Portfolio	43
Allowance for Credit Losses	44
Market Risk Management	46
Trading Risk Management	46
Interest Rate Risk Management for the Banking Book	48
Mortgage Banking Risk Management	50
Complex Accounting Estimates	50
Non-GAAP Reconciliations	51
 <b><u>Item 3. Quantitative and Qualitative Disclosures about Market Risk</u></b>	 51
<b><u>Item 4. Controls and Procedures</u></b>	<b>51</b>

## Part II. Other Information

<b>Item 1. Legal Proceedings</b>	<b>105</b>
<b>Item 1A. Risk Factors</b>	<b>105</b>
<b>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</b>	<b>106</b>
<b>Item 6. Exhibits</b>	<b>107</b>
<b>Signature</b>	<b>107</b>

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Bank of America Corporation (the "Corporation") and its management may make certain statements that constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements can be identified by the fact that they do not relate strictly to historical or current facts. Forward-looking statements often use words such as "anticipates," "targets," "expects," "hopes," "estimates," "intends," "plans," "goals," "believes," "continue" and other similar expressions or future or conditional verbs such as "will," "may," "might," "should," "would" and "could." Forward-looking statements represent the Corporation's current expectations, plans or forecasts of its future results, revenues, provision for credit losses, expenses, efficiency ratio, capital measures, strategy, and future business and economic conditions more generally, and other future matters. These statements are not guarantees of future results or performance and involve certain known and unknown risks, uncertainties and assumptions that are difficult to predict and are often beyond the Corporation's control. Actual outcomes and results may differ materially from those expressed in, or implied by, any of these forward-looking statements.

You should not place undue reliance on any forward-looking statement and should consider the following uncertainties and risks, as well as the risks and uncertainties more fully discussed under Item 1A. Risk Factors of our 2019 Annual Report on Form 10-K and in any of the Corporation's subsequent Securities and Exchange Commission filings: the Corporation's potential judgments, claims, damages, penalties, fines and reputational damage resulting from pending or future litigation and regulatory and government actions, including as a result of our participation in and execution of government programs related to the Coronavirus Disease 2019 (COVID-19) pandemic; the possibility that the Corporation's future liabilities may be in excess of its recorded liability and estimated range of possible loss for litigation, regulatory, and representations and warranties exposures; the possibility that the Corporation could face increased servicing, fraud, indemnity, contribution or other claims from one or more counterparties, including trustees, purchasers of loans, underwriters, issuers, monolines, private-label and other investors, or other parties involved in securitizations; the Corporation's ability to resolve representations and warranties repurchase and related claims, including claims brought by investors or trustees seeking to avoid the statute of limitations for repurchase claims; the risks related to the discontinuation of the London Interbank Offered Rate and other reference rates, including increased expenses and litigation and the effectiveness of hedging strategies; uncertainties about the financial stability and growth rates of non-U.S. jurisdictions, the risk that those jurisdictions may face difficulties servicing their sovereign debt, and related stresses on financial markets, currencies and trade, and the Corporation's exposures to such risks, including direct, indirect and operational; the impact of U.S. and global interest rates, inflation, currency exchange rates, economic conditions, trade policies and tensions, including tariffs, and potential geopolitical instability; the impact of the interest rate environment

on the Corporation's business, financial condition and results of operations; the possibility that future credit losses may be higher than currently expected due to changes in economic assumptions, customer behavior, adverse developments with respect to U.S. or global economic conditions and other uncertainties; the Corporation's ability to achieve its expense targets and expectations regarding revenue, net interest income, provision for credit losses, net charge-offs, effective tax rate, loan growth or other projections; adverse changes to the Corporation's credit ratings from the major credit rating agencies; an inability to access capital markets or maintain deposits or borrowing costs; estimates of the fair value and other accounting values, subject to impairment assessments, of certain of the Corporation's assets and liabilities; the estimated or actual impact of changes in accounting standards or assumptions in applying those standards; uncertainty regarding the content, timing and impact of regulatory capital and liquidity requirements; the impact of adverse changes to total loss-absorbing capacity requirements, stress capital buffer requirements and/or global systemically important bank surcharges; the potential impact of actions of the Board of Governors of the Federal Reserve System on the Corporation's capital plans; the effect of regulations, other guidance or additional information on the impact from the Tax Cuts and Jobs Act; the impact of implementation and compliance with U.S. and international laws, regulations and regulatory interpretations, including, but not limited to, recovery and resolution planning requirements, Federal Deposit Insurance Corporation assessments, the Volcker Rule, fiduciary standards, derivatives regulations and the Coronavirus Aid, Relief, and Economic Security Act and any similar or related rules and regulations; a failure or disruption in or breach of the Corporation's operational or security systems or infrastructure, or those of third parties, including as a result of cyber attacks or campaigns; the impact on the Corporation's business, financial condition and results of operations from the United Kingdom's exit from the European Union; the impact of any future federal government shutdown and uncertainty regarding the federal government's debt limit or changes to the U.S. presidential administration and Congress; the emergence of widespread health emergencies or pandemics, including the magnitude and duration of the COVID-19 pandemic and its impact on the U.S. and/or global economy, financial market conditions and our business, results of operations and financial condition; the impact of natural disasters, military conflict, terrorism or other geopolitical events; and other matters.

Forward-looking statements speak only as of the date they are made, and the Corporation undertakes no obligation to update any forward-looking statement to reflect the impact of circumstances or events that arise after the date the forward-looking statement was made.

Notes to the Consolidated Financial Statements referred to in Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) are incorporated by reference into the MD&A. Certain prior-period amounts have been reclassified to conform to current-period presentation.

Throughout the MD&A, the Corporation uses certain acronyms and abbreviations which are defined in the Glossary.

## Executive Summary

### Business Overview

The Corporation is a Delaware corporation, a bank holding company (BHC) and a financial holding company. When used in this report, "the Corporation," "we," "us" and "our" may refer to Bank of America Corporation individually, Bank of America Corporation and its subsidiaries, or certain of Bank of America Corporation's subsidiaries or affiliates. Our principal executive offices are located in Charlotte, North Carolina. Through our banking and various nonbank subsidiaries throughout the U.S. and in international markets, we provide a diversified range of banking and nonbank financial services and products through four business segments: *Consumer Banking*, *Global Wealth & Investment Management (GWIM)*, *Global Banking* and *Global Markets*, with the remaining operations recorded in *All Other*. We operate our banking activities primarily under the Bank of America, National Association (Bank of America, N.A. or BANA) charter. At September 30, 2020, the Corporation had \$2.7 trillion in assets and a headcount of approximately 211,000 employees.

As of September 30, 2020, we served clients through operations across the U.S., its territories and approximately 35 countries. Our retail banking footprint covers all major markets in the U.S., and we serve approximately 66 million consumer and small business clients with approximately 4,300 retail financial centers, approximately 17,000 ATMs, and leading digital banking platforms ([www.bankofamerica.com](http://www.bankofamerica.com)) with more than 39 million active users, including approximately 31 million active mobile users. We offer industry-leading support to approximately three million small business households. Our wealth management businesses, with client balances of \$3.1 trillion, provide tailored solutions to meet client needs through a full set of investment management, brokerage, banking, trust and retirement products. We are a global leader in corporate and investment banking and trading across a broad range of asset classes serving corporations, governments, institutions and individuals around the world.

## Recent Developments

### Capital Management

In June 2020, the Board of Governors of the Federal Reserve System (Federal Reserve) notified BHCs of their 2020 Comprehensive Capital Analysis and Review (CCAR) supervisory stress test results, which included a preliminary stress capital buffer (SCB) that was finalized in August 2020. Based on our results, we are subject to a 2.5 percent SCB for the period beginning October 1, 2020 and ending on September 30, 2021.

Due to economic uncertainty resulting from the Coronavirus Disease 2019 (COVID-19) pandemic, the Federal Reserve required all large banks to suspend share repurchase programs in the third quarter of 2020, except for repurchases to offset shares awarded under equity-based compensation plans, and to limit dividends to existing rates that do not exceed the average of the last four quarters' net income. In September 2020, the Federal Reserve announced that these measures would remain in place for the fourth quarter of 2020. Large banks will also be required to resubmit and update their capital plans in November

2020 based on the Federal Reserve's updated supervisory stress test scenarios. The Federal Reserve announced that they will publish the results of the additional supervisory stress tests by December 31, 2020.

On October 21, 2020, the Board of Directors (the Board) declared a quarterly common stock dividend at the current rate of \$0.18 per share. We intend to maintain the quarterly common stock dividend at this rate until further notice, subject to approval by the Board. For more information on our capital resources, see Capital Management on page 23.

### COVID-19 Pandemic

As previously disclosed, in the first quarter of 2020, the World Health Organization declared the outbreak of COVID-19 a pandemic. In an attempt to contain the spread and impact of the COVID-19 pandemic, travel bans and restrictions, quarantines, shelter-in-place orders and limitations on business activity have been implemented. Additionally, there has been a decline in global economic activity, reduced U.S. and global economic output and a deterioration in macroeconomic conditions in the U.S. and globally. This has resulted in, among other things, high rates of unemployment and underemployment and caused volatility and disruptions in the global financial markets, including the energy and commodity markets. Although some restrictive measures have been eased in certain areas, businesses, market participants, our counterparties and clients, and the U.S. and global economies have been negatively impacted and are likely to be so for an extended period of time, as there remains significant uncertainty about the timing and strength of an economic recovery.

In response to the pandemic, the Corporation has implemented protocols and processes to execute its business continuity plans and help protect its employees and support its clients. The Corporation is managing its response to the COVID-19 pandemic according to its Enterprise Response Framework, which invokes centralized management of the crisis event and the integration of its response. The CEO and key members of the Corporation's management team meet regularly with co-leaders of the Executive Response Team, which is composed of senior executives across the Corporation, to help drive decisions, communications and consistency of response across all businesses and functions. We are also coordinating with global, regional and local authorities and health experts, including the U.S. Centers for Disease Control and Prevention (CDC) and the World Health Organization.

Additionally, we have implemented a number of measures to assist our employees, clients and the communities we serve as discussed below.

### Employees

We are providing support to our teammates to help promote the health and safety of our employees by monitoring guidance from the CDC, medical boards and health authorities and sharing such guidance with our employees. We are also operating our businesses from remote locations and leveraging our business continuity plans and capabilities.

The Corporation has globally implemented a work-from-home posture, which has resulted in the substantial majority of our employees working from home, and pre-planned contingency strategies for site-based operations for our remaining employees. We continue to evaluate our continuity plans and work-from-home strategy in an effort to best protect the health and safety of our employees.

## Clients

We continue to leverage our business continuity plans and capabilities to service our clients and meet our clients' financial needs by offering assistance to clients affected by the COVID-19 pandemic and providing access to credit and the important financial services on which our clients rely. We are also participating in the programs created by the Coronavirus Aid, Relief and Economic Security (CARES Act) and Federal Reserve lending programs for businesses, such as the Paycheck Protection Program (PPP) and Main Street Lending Program, as well as other measures. While most of our deferral programs expired in the third quarter of 2020, we continue to offer assistance on a case-by-case basis when requested by clients affected by the COVID-19 pandemic.

As of September 30, 2020, we had approximately 343,000 PPP loans outstanding with balances totaling \$24.7 billion, which were recorded in the *Consumer*, *GWIM* and *Global Banking* segments. In addition, we have begun to process applications for forgiveness. For more information on PPP loans, see Credit Risk Management on page 31, and for more information on accounting for PPP loans and loan modifications under the CARES Act, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

## Community Partners

We continue to support the communities where we live and work by engaging in various initiatives to help those affected by COVID-19. These initiatives include committing resources to provide medical supplies, food and other necessities for those in need. We are also supporting racial equality, economic opportunity and environmental sustainability through direct equity investments in minority-owned depository institutions, equity investments in minority entrepreneurs, businesses and funds, as well as other initiatives.

## Risk Management

We continue to manage the increased operational risk related to the execution of our business continuity plans in accordance with our Enterprise Response Framework, Risk Framework and Operational Risk Management Program. For more information, see Managing Risk on page 23.

## Loan Modifications

The Corporation has implemented various consumer and commercial loan modification programs to provide its borrowers relief from the economic impacts of COVID-19. Based on guidance in the CARES Act that the Corporation adopted, COVID-19 related modifications to consumer and commercial loans that were current as of December 31, 2019 are exempt from troubled debt restructuring (TDR) classification under accounting principles generally accepted in the United States of America (GAAP). In addition, the bank regulatory agencies issued interagency guidance stating that COVID-19 related short-term modifications (i.e., six months or less) granted to consumer or commercial loans that were current as of the loan modification program implementation date are not TDRs. For more information, see *Note 1 – Summary of Significant Accounting Principles* and *Note 5 – Outstanding Loans and Leases and Allowance for Credit Losses* to the Consolidated Financial Statements.

We have provided borrowers with relief from the economic impacts of COVID-19 through payment deferral and forbearance programs. A significant portion of deferrals expired in the third quarter of 2020, reflecting a decline in customer requests for assistance.

As of October 21, 2020, deferred consumer and small business loans recorded on the Consolidated Balance Sheet totaled \$9.8 billion, consisting of \$9.0 billion of residential mortgage and home equity loans, including loans serviced by others, that are well-collateralized, \$298 million of consumer credit card loans and \$582 million of small business and consumer vehicle loans. For deferred residential mortgage and home equity loans, the weighted average loan-to-value (LTV) and combined LTV (CLTV) ratios were 61 percent and 57 percent, respectively. Of the consumer credit card loans for which payment deferral programs have expired, 91 percent of cardholders have made at least one payment since exiting deferral.

As of October 21, 2020, excluding small business, deferred commercial balances totaled \$1.4 billion, or 0.29 percent of total commercial loans.

## Other Related Matters

Although the macroeconomic outlook improved modestly in the three months ended September 30, 2020, the future direct and indirect impact of COVID-19 on our businesses, results of operations and financial condition of the Corporation remain highly uncertain. Should current economic conditions persist or deteriorate, this macroeconomic environment will have a continued adverse effect on our businesses and results of operations and could have an adverse effect on our financial condition. For more information on how the risks related to the COVID-19 pandemic may adversely affect our businesses, results of operations and financial condition, see Part II, Item 1A. Risk Factors on page 105.

## LIBOR and Other Benchmark Rates

As previously disclosed, to facilitate an orderly transition from Interbank Offered Rates (IBORs) and other benchmark rates to alternative reference rates (ARRs), the Corporation has established an enterprise-wide program to identify, assess and monitor risks associated with the expected discontinuation or unavailability of benchmarks, including the London Interbank Offered Rate (LIBOR). As part of this program, the Corporation continues to identify, assess and monitor risks associated with the expected discontinuation or unavailability of LIBOR and other benchmarks. Additionally, the Corporation continues to evaluate and address documentation and contractual mechanics of outstanding IBOR-based products and contracts that may mature after LIBOR is no longer deemed a representative benchmark, as well as new and potential future ARR-based products and contracts to achieve operational readiness.

This program, which is led by the Corporation's Chief Operating Officer, includes active involvement of senior management and regular reports to the Enterprise Risk Committee. The program is structured to address the Corporation's industry and regulatory engagement, client and financial contract changes, internal and external communications, technology and operations modifications, introduction of new products, migration of existing clients, and program strategy and governance.

As the markets for ARRs continue to grow, the Corporation continues to monitor and participate in the development and usage of ARRs, including the Secured Overnight Financing Rate (SOFR) and the Sterling Overnight Index Average (SONIA). The Corporation issued debt and deposits linked to SOFR and SONIA, facilitated debt issuances by clients linked to SOFR and SONIA, and executed SOFR- and SONIA-based derivative contracts to make markets and facilitate client activities.

In accordance with the industry-wide transition from IBORs to ARRs, central clearing counterparties (CCPs) in Europe and the U.S., which act as intermediaries and require collateral deposits for the clearing and settlement of interest rate swap products and other derivatives, changed the interest rate used to calculate amounts due to counterparties for collateral deposits posted with them from the European Overnight Index Average (EONIA) to the Euro Short-Term Rate (ESTR) and the Effective Fed Funds Rate (EFFR) to SOFR in July and October 2020, respectively. In connection with this transition, the Corporation updated its operational models, systems, procedures and internal infrastructure. The earnings impact from the changes in net valuations of these derivatives was not significant at the point of conversion, as the Corporation either provided or received compensation to/from the CCPs. Additionally, in October 2020, the Corporation and certain of its subsidiaries adhered to the International Swaps and Derivatives Association, Inc. 2020 IBOR Fallbacks Protocol, effective January 25, 2021, which provides a mechanism to enable market participants to incorporate fallbacks for certain legacy non-cleared derivatives linked to certain IBORs.

The Corporation continues to monitor the impact of COVID-19 on the market and industry transition to ARRs, including the readiness of impacted clients and their operational readiness to transition to ARRs. For more information on the expected replacement of LIBOR and other benchmark rates, see

Executive Summary - Recent Developments - LIBOR and Other Benchmark Rates in the MD&A and Item 1A. Risk Factors - Other of the Corporation's 2019 Annual Report on Form 10-K. For more information about the Corporation's risks related to the COVID-19 pandemic, see Part II, Item 1A. Risk Factors on page 105.

### Merchant Services Joint Venture

Prior to July 1, 2020, a significant portion of our merchant processing activity was performed by a joint venture in which we held a 49 percent ownership interest. Effective July 1, 2020, the Corporation received its share of the joint venture's merchant contracts and began performing merchant processing services for these merchants. The Corporation records merchant revenue in card income with the related costs in noninterest expense in the Consolidated Statement of Income. For more information, see *Note 10 – Commitments and Contingencies* to the Consolidated Financial Statements.

### Financial Highlights

Effective January 1, 2020, we adopted the new accounting standard on current expected credit losses (CECL), under which the allowance is measured based on management's best estimate of lifetime expected credit losses (ECL). Prior-year periods presented reflect measurement of the allowance based on management's estimate of probable incurred credit losses. For more information, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

**Table 1** Summary Income Statement and Selected Financial Data

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions, except per share information)				
<b>Income statement</b>				
Net interest income	\$ 10,129	\$ 12,187	\$ 33,107	\$ 36,751
Noninterest income	10,207	10,620	32,322	32,144
<b>Total revenue, net of interest expense</b>	<b>20,336</b>	<b>22,807</b>	<b>65,429</b>	<b>68,895</b>
Provision for credit losses	1,389	779	11,267	2,649
Noninterest expense	14,401	15,169	41,286	41,661
<b>Income before income taxes</b>	<b>4,546</b>	<b>6,859</b>	<b>12,876</b>	<b>24,585</b>
Income tax expense	(335)	1,082	452	4,149
<b>Net income</b>	<b>4,881</b>	<b>5,777</b>	<b>12,424</b>	<b>20,436</b>
Preferred stock dividends	441	505	1,159	1,186
<b>Net income applicable to common shareholders</b>	<b>\$ 4,440</b>	<b>\$ 5,272</b>	<b>\$ 11,265</b>	<b>\$ 19,250</b>
<b>Per common share information</b>				
Earnings	\$ 0.51	\$ 0.57	\$ 1.29	\$ 2.02
Diluted earnings	0.51	0.56	1.28	2.01
Dividends paid	0.18	0.18	0.54	0.48
<b>Performance ratios</b>				
Return on average assets <sup>(1)</sup>	0.71 %	0.95 %	0.63 %	1.14 %
Return on average common shareholders' equity <sup>(1)</sup>	7.24	8.48	6.20	10.49
Return on average tangible common shareholders' equity <sup>(2)</sup>	10.16	11.84	8.71	14.67
Efficiency ratio <sup>(1)</sup>	70.81	66.51	63.10	60.47
<b>Balance sheet</b>				
Total loans and leases			\$ 955,172	\$ 983,426
Total assets			2,738,452	2,434,079
Total deposits			1,702,880	1,434,803
Total liabilities			2,469,602	2,169,269
Total common shareholders' equity			245,423	241,409
Total shareholders' equity			268,850	264,810

<sup>(1)</sup> For definitions, see Key Metrics on page 104.

<sup>(2)</sup> Return on average tangible common shareholders' equity is a non-GAAP financial measure. For more information and a corresponding reconciliation to the most closely related financial measures defined by accounting principles generally accepted in the United States of America, see Non-GAAP Reconciliations on page 51.

Net income was \$4.9 billion and \$12.4 billion, or \$0.51 and \$1.28 per diluted share, for the three and nine months ended September 30, 2020 compared to \$5.8 billion and \$20.4 billion, or \$0.56 and \$2.01 per diluted share, for the same periods in 2019. The decline in net income was primarily due to higher provision for credit losses driven by the weaker economic outlook related to COVID-19 and lower net interest income, partially offset by a \$2.1 billion pretax impairment charge related to the notice of the termination of the merchant services joint venture in the prior year.

Total assets increased \$304.4 billion from December 31, 2019 to \$2.7 trillion primarily driven by an increase in cash and cash equivalents, debt securities and federal funds sold and securities borrowed or purchased under agreements to resell primarily due to cash deployed from higher deposit balances. The increase in assets was partially offset by lower loans and leases primarily driven by a decline in credit card originations and promotional balances, mortgage paydowns and lower origination volumes.

Total liabilities increased \$300.3 billion from December 31, 2019 to \$2.5 trillion primarily driven by higher deposit inflows resulting from government stimulus actions and client responses to market volatility as clients improved their liquidity positions. The increase in liabilities was also due to higher federal funds purchased and securities loaned or sold under agreements to repurchase primarily due to higher inventory in Fixed Income, Currencies and Commodities (FICC) within *Global Markets*. Long-term debt also increased primarily driven by

valuations due to lower interest rates, as well as debt issuances.

Shareholders' equity increased \$4.0 billion from December 31, 2019 primarily due to net income and market value increases on debt securities, partially offset by returns of capital to shareholders through common stock repurchases and common and preferred stock dividends as well as the impact of the adoption of the new credit loss accounting standard.

## Net Interest Income

Net interest income decreased \$2.1 billion to \$10.1 billion, and \$3.6 billion to \$33.1 billion for the three and nine months ended September 30, 2020 compared to the same periods in 2019. Net interest yield on a fully taxable-equivalent (FTE) basis decreased 69 basis points (bps) to 1.72 percent, and 49 bps to 1.96 percent for the same periods. The decrease in net interest income was primarily driven by lower interest rates, partially offset by reduced deposit and funding costs, the deployment of excess deposits into securities and an additional day of interest accrual. We expect net interest income to remain relatively flat or to modestly increase in the fourth quarter of 2020 as compared to the third quarter of 2020 assuming economic conditions do not deteriorate and interest rates remain stable as compared to September 30, 2020. For more information on net interest yield and the FTE basis, see Supplemental Financial Data on page 8, and for more information on interest rate risk management, see Interest Rate Risk Management for the Banking Book on page 48.

## Noninterest Income

**Table 2 Noninterest Income**

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
Fees and commissions:				
Card income	\$ 1,568	\$ 1,465	\$ 4,089	\$ 4,286
Service charges	1,817	1,975	5,282	5,717
Investment and brokerage services	3,623	3,494	10,803	10,324
Investment banking fees	1,769	1,533	5,316	4,168
Total fees and commissions	8,777	8,467	25,490	24,495
Market making and similar activities	1,689	2,118	6,983	7,267
Other income	(259)	35	(151)	382
<b>Total noninterest income</b>	<b>\$ 10,207</b>	<b>\$ 10,620</b>	<b>\$ 32,322</b>	<b>\$ 32,144</b>

Noninterest income decreased \$413 million to \$10.2 billion and increased \$178 million to \$32.3 billion for the three and nine months ended September 30, 2020 compared to the same periods in 2019. The following highlights the significant changes.

- Card income increased \$103 million for the three-month period and decreased \$197 million for the nine-month period. The increase in the three-month period was primarily driven by higher income related to the processing of unemployment insurance and higher merchant processing, partially offset by lower client activity related to the impact of COVID-19. The decrease in the nine-month period was primarily due to lower levels of consumer spending driven by the impact of COVID-19.
- Service charges decreased \$158 million and \$435 million primarily due to higher deposit balances and lower client activity due to the impact of COVID-19.
- Investment and brokerage services income increased \$129 million and \$479 million primarily due to higher client transactional activity, higher market valuations and assets

under management (AUM) flows, partially offset by declines in AUM pricing.

- Investment banking fees increased \$236 million and \$1.1 billion primarily due to higher equity underwriting fees and for the nine-month period, higher debt underwriting fees, as well.
- Market making and similar activities decreased \$429 million and \$284 million. The decrease in both periods was primarily due to the impact of lower U.S. interest rates on certain risk management derivatives. The decrease in the nine-month period was also partially offset by increased client activity and strong trading performance in FICC.
- Other income decreased \$294 million and \$533 million. The decrease in the three-month period was primarily due to higher partnership losses on tax credit investments, primarily affordable housing and renewable energy, as well as loan sales in the prior period. The decrease in the nine-month period was primarily due to lower equity investment income and higher partnership losses on tax credit investments.



## Provision for Credit Losses

The provision for credit losses increased \$610 million to \$1.4 billion, and \$8.6 billion to \$11.3 billion for the three and nine months ended September 30, 2020 compared to the same periods in 2019 primarily driven by higher ECL due to a weaker economic outlook related to COVID-19. For more information on the provision for credit losses, see Allowance for Credit Losses on page 44.

## Noninterest Expense

**Table 3 Noninterest Expense**

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
Compensation and benefits	\$ 8,200	\$ 7,779	\$ 24,535	\$ 24,000
Occupancy and equipment	1,798	1,663	5,302	4,908
Information processing and communications	1,333	1,163	3,807	3,484
Product delivery and transaction related	930	696	2,518	2,067
Marketing	308	440	1,238	1,410
Professional fees	450	386	1,206	1,155
Other general operating	1,382	3,042	2,680	4,637
<b>Total noninterest expense</b>	<b>\$ 14,401</b>	<b>\$ 15,169</b>	<b>\$ 41,286</b>	<b>\$ 41,661</b>

Noninterest expense decreased \$768 million to \$14.4 billion, and \$375 million to \$41.3 billion for the three and nine months ended September 30, 2020 compared to the same periods in 2019. The decrease was primarily due to a \$2.1 billion pretax impairment charge related to the notice of termination of the merchant services joint venture recorded in the prior-year

periods, partially offset by the impact of COVID-19 related expense, as well as higher litigation expense. Absent unexpected changes, we expect noninterest expense will be approximately \$13.7 billion in the fourth quarter of 2020 assuming both lower COVID-19 related costs and litigation expense.

## Income Tax Expense

**Table 4 Income Tax Expense**

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
Income before income taxes	\$ 4,546	\$ 6,859	\$ 12,876	\$ 24,585
Income tax expense	(335)	1,082	452	4,149
Effective tax rate	(7.4)%	15.8 %	3.5 %	16.9 %

The changes in the effective tax rates for the three and nine months ended September 30, 2020 compared to the same periods a year ago were driven by the impact of our recurring tax preference benefits on the lower levels of pretax income and the impact of the U.K. tax law change discussed below. Our recurring tax preference benefits primarily consist of tax credits from investments in affordable housing and renewable energy, aligning with our responsible growth strategy to address global sustainability challenges. We expect the effective tax rate for the fourth quarter of 2020 to be approximately 10 percent, excluding unusual items. Absent these tax credits, the effective tax rate would be approximately 26 percent.

On July 22, 2020, the U.K. enacted a reversal of the final two percent of scheduled decreases in the U.K. corporation tax rate, which had been previously enacted. This change will unfavorably affect income tax expense on future U.K. earnings, and requires a reversal of the adjustment to the U.K. net deferred tax assets recognized at the time the related tax rate decrease was originally enacted. Accordingly, during the third quarter of 2020, the Corporation recorded a positive income tax adjustment of approximately \$700 million along with a corresponding increase to the U.K. net deferred tax assets.

## Supplemental Financial Data

### Non-GAAP Financial Measures

In this Form 10-Q, we present certain non-GAAP financial measures. Non-GAAP financial measures exclude certain items or otherwise include components that differ from the most directly comparable measures calculated in accordance with GAAP. Non-GAAP financial measures are provided as additional useful information to assess our financial condition, results of operations (including period-to-period operating performance) or compliance with prospective regulatory requirements. These non-GAAP financial measures are not intended as a substitute for GAAP financial measures and may not be defined or calculated the same way as non-GAAP financial measures used by other companies.

We view net interest income and related ratios and analyses on an FTE basis, which when presented on a consolidated basis are non-GAAP financial measures. To derive the FTE basis, net interest income is adjusted to reflect tax-exempt income on an equivalent before-tax basis with a corresponding increase in income tax expense. For purposes of this calculation, we use the federal statutory tax rate of 21 percent and a representative state tax rate. Net interest yield, which measures the basis points we earn over the cost of funds, utilizes net interest income on an FTE basis. We believe that presentation of these items on an FTE basis allows for comparison of amounts from both taxable and tax-exempt sources and is consistent with industry practices.

We may present certain key performance indicators and ratios excluding certain items (e.g., debit valuation adjustment (DVA) gains (losses)) which result in non-GAAP financial measures. We believe that the presentation of measures that exclude these items is useful because such measures provide additional information to assess the underlying operational performance and trends of our businesses and to allow better comparison of period-to-period operating performance.

We also evaluate our business based on certain ratios that utilize tangible equity, a non-GAAP financial measure. Tangible equity represents shareholders' equity or common shareholders' equity reduced by goodwill and intangible assets (excluding mortgage servicing rights (MSRs)), net of related deferred tax liabilities ("adjusted" shareholders' equity or common shareholders' equity). These measures are used to evaluate our use of equity. In addition, profitability, relationship and investment models use both return on average tangible

common shareholders' equity and return on average tangible shareholders' equity as key measures to support our overall growth objectives. These ratios are as follows:

- Return on average tangible common shareholders' equity measures our net income applicable to common shareholders as a percentage of adjusted average common shareholders' equity. The tangible common equity ratio represents adjusted ending common shareholders' equity divided by total tangible assets.
- Return on average tangible shareholders' equity measures our net income as a percentage of adjusted average total shareholders' equity. The tangible equity ratio represents adjusted ending shareholders' equity divided by total tangible assets.
- Tangible book value per common share represents adjusted ending common shareholders' equity divided by ending common shares outstanding.

We believe ratios utilizing tangible equity provide additional useful information because they present measures of those assets that can generate income. Tangible book value per common share provides additional useful information about the level of tangible assets in relation to outstanding shares of common stock.

The aforementioned supplemental data and performance measures are presented in Tables 5 and 6.

For more information on the reconciliation of these non-GAAP financial measures to the corresponding GAAP financial measures, see Non-GAAP Reconciliations on page 51.

### Key Performance Indicators

We present certain key financial and nonfinancial performance indicators (key performance indicators) that management uses when assessing our consolidated and/or segment results. We believe they are useful to investors because they provide additional information about our underlying operational performance and trends. These key performance indicators (KPIs) may not be defined or calculated in the same way as similar KPIs used by other companies. For information on how these metrics are defined, see Key Metrics on page 104.

Our consolidated key performance indicators, which include various equity and credit metrics, are presented in Table 1 on page 5 and/or Table 5 on page 9.

For information on key segment performance metrics, see Business Segment Operations on page 12.

**Table 5 Selected Financial Data**

(In millions, except per share information)	2020 Quarters			2019 Quarters		Nine Months Ended September 30	
	Third	Second	First	Fourth	Third	2020	2019
<b>Income statement</b>							
Net interest income	\$ 10,129	\$ 10,848	\$ 12,130	\$ 12,140	\$ 12,187	\$ 33,107	\$ 36,751
Noninterest income	10,207	11,478	10,637	10,209	10,620	32,322	32,144
Total revenue, net of interest expense	20,336	22,326	22,767	22,349	22,807	65,429	68,895
Provision for credit losses	1,389	5,117	4,761	941	779	11,267	2,649
Noninterest expense	14,401	13,410	13,475	13,239	15,169	41,286	41,661
Income before income taxes	4,546	3,799	4,531	8,169	6,859	12,876	24,585
Income tax expense	(335)	266	521	1,175	1,082	452	4,149
Net income	4,881	3,533	4,010	6,994	5,777	12,424	20,436
Net income applicable to common shareholders	4,440	3,284	3,541	6,748	5,272	11,265	19,250
Average common shares issued and outstanding	8,732.9	8,739.9	8,815.6	9,017.1	9,303.6	8,762.6	9,516.2
Average diluted common shares issued and outstanding	8,777.5	8,768.1	8,862.7	9,079.5	9,353.0	8,800.5	9,565.7
<b>Performance ratios</b>							
Return on average assets <sup>(1)</sup>	0.71 %	0.53 %	0.65 %	1.13 %	0.95 %	0.63 %	1.14 %
Four-quarter trailing return on average assets <sup>(2)</sup>	0.75	0.81	0.99	1.14	1.17	n/a	n/a
Return on average common shareholders' equity <sup>(1)</sup>	7.24	5.44	5.91	11.00	8.48	6.20	10.49
Return on average tangible common shareholders' equity <sup>(1)</sup>	10.16	7.63	8.32	15.43	11.84	8.71	14.67
Return on average shareholders' equity <sup>(1)</sup>	7.26	5.34	6.10	10.40	8.48	6.24	10.19
Return on average tangible shareholders' equity <sup>(3)</sup>	9.84	7.23	8.29	14.09	11.43	8.46	13.78
Total ending equity to total ending assets	9.82	9.69	10.11	10.88	11.06	9.82	11.06
Total average equity to total average assets	9.76	9.85	10.60	10.89	11.21	10.05	11.22
Dividend payout	35.36	47.87	44.57	23.90	31.48	41.90	23.56
<b>Per common share data</b>							
Earnings	\$ 0.51	\$ 0.38	\$ 0.40	\$ 0.75	\$ 0.57	\$ 1.29	\$ 2.02
Diluted earnings	0.51	0.37	0.40	0.74	0.56	1.28	2.01
Dividends paid	0.18	0.18	0.18	0.18	0.18	0.54	0.48
Book value <sup>(1)</sup>	28.33	27.96	27.84	27.32	26.96	28.33	26.96
Tangible book value <sup>(3)</sup>	20.23	19.90	19.79	19.41	19.26	20.23	19.26
<b>Market capitalization</b>							
	\$ 208,656	\$ 205,772	\$ 184,181	\$ 311,209	\$ 264,842	\$ 208,656	\$ 264,842
<b>Average balance sheet</b>							
Total loans and leases	\$ 974,018	\$ 1,031,387	\$ 990,283	\$ 973,986	\$ 964,733		
Total assets	2,739,684	2,704,186	2,494,928	2,450,005	2,412,223		
Total deposits	1,695,488	1,658,197	1,439,336	1,410,439	1,375,052		
Long-term debt	224,254	221,167	210,816	206,026	202,620		
Common shareholders' equity	243,896	242,889	241,078	243,439	246,630		
Total shareholders' equity	267,323	266,316	264,534	266,900	270,430		
<b>Asset quality</b>							
Allowance for credit losses <sup>(4)</sup>	\$ 21,506	\$ 21,091	\$ 17,126	\$ 10,229	\$ 10,242		
Nonperforming loans, leases and foreclosed properties <sup>(5)</sup>	4,730	4,611	4,331	3,837	3,723		
Allowance for loan and lease losses as a percentage of total loans and leases outstanding <sup>(5)</sup>	2.07 %	1.96 %	1.51 %	0.97 %	0.98 %		
Allowance for loan and lease losses as a percentage of total nonperforming loans and leases <sup>(5)</sup>	431	441	389	265	271		
Net charge-offs	\$ 972	\$ 1,146	\$ 1,122	\$ 959	\$ 811		
Annualized net charge-offs as a percentage of average loans and leases outstanding <sup>(6)</sup>	0.40 %	0.45 %	0.46 %	0.39 %	0.34 %		
<b>Capital ratios at period end<sup>(6)</sup></b>							
Common equity tier 1 capital	11.9 %	11.4 %	10.8 %	11.2 %	11.4 %		
Tier 1 capital	13.5	12.9	12.3	12.6	12.9		
Total capital	16.1	14.8	14.6	14.7	15.1		
Tier 1 leverage	7.4	7.4	7.9	7.9	8.2		
Supplementary leverage ratio	6.9	7.1	6.4	6.4	6.6		
Tangible equity <sup>(3)</sup>	7.4	7.3	7.7	8.2	8.4		
Tangible common equity <sup>(3)</sup>	6.6	6.5	6.7	7.3	7.4		
<b>Total loss-absorbing capacity and long-term debt metrics</b>							
Total loss-absorbing capacity to risk-weighted assets	26.9 %	26.0 %	24.6 %	24.6 %	24.8 %		
Total loss-absorbing capacity to supplementary leverage exposure	13.7	14.2	12.8	12.5	12.7		
Eligible long-term debt to risk-weighted assets	12.9	12.4	11.6	11.5	11.4		
Eligible long-term debt to supplementary leverage exposure	6.6	6.7	6.1	5.8	5.8		

<sup>(1)</sup> For definitions, see Key Metrics on page 104.

<sup>(2)</sup> Calculated as total net income for four consecutive quarters divided by annualized average assets for four consecutive quarters.

<sup>(3)</sup> Tangible equity ratios and tangible book value per share of common stock are non-GAAP financial measures. For more information on these ratios and corresponding reconciliations to GAAP financial measures, see Supplemental Financial Data on page 8 and Non-GAAP Reconciliations on page 51.

<sup>(4)</sup> Includes the allowance for loan and lease losses and the reserve for unfunded lending commitments.

<sup>(5)</sup> Balances and ratios do not include loans accounted for under the fair value option. For additional exclusions from nonperforming loans, leases and foreclosed properties, see Consumer Portfolio Credit Risk Management – Nonperforming Consumer Loans, Leases and Foreclosed Properties Activity on page 36 and corresponding Table 26 and Commercial Portfolio Credit Risk Management – Nonperforming Commercial Loans, Leases and Foreclosed Properties Activity on page 41 and corresponding Table 33.

<sup>(6)</sup> For more information, including which approach is used to assess capital adequacy, see Capital Management on page 23.

n/a = not applicable

**Table 6**      **Quarterly Average Balances and Interest Rates - FTE Basis**

	Average Balance	Interest Income/ Expense <sup>(1)</sup>	Yield/ Rate	Average Balance	Interest Income/ Expense <sup>(1)</sup>	Yield/ Rate
(Dollars in millions)	Third Quarter 2020			Third Quarter 2019		
<b>Earning assets</b>						
Interest-bearing deposits with the Federal Reserve, non-U.S. central banks and other banks	\$ 245,682	\$ 10	0.02 %	\$ 122,033	\$ 453	1.47 %
Time deposits placed and other short-term investments	7,686	(4)	(0.25)	9,863	47	1.87
Federal funds sold and securities borrowed or purchased under agreements to resell	384,221	55	0.06	269,129	1,242	1.83
Trading account assets	146,972	960	2.60	157,818	1,338	3.37
Debt securities	533,261	2,147	1.63	447,126	2,856	2.56
Loans and leases <sup>(2)</sup> :						
Residential mortgage	237,414	1,811	3.05	224,084	1,937	3.46
Home equity	37,897	284	2.99	43,616	552	5.03
Credit card	81,309	2,086	10.20	94,370	2,581	10.85
Direct/Indirect and other consumer <sup>(3)</sup>	89,559	593	2.63	90,813	824	3.59
Total consumer	446,179	4,774	4.26	452,883	5,894	5.18
U.S. commercial	343,533	2,099	2.43	324,436	3,279	4.01
Non-U.S. commercial	102,938	531	2.05	105,003	905	3.42
Commercial real estate <sup>(4)</sup>	63,262	393	2.47	62,185	687	4.38
Commercial lease financing	18,106	138	3.04	20,226	182	3.58
Total commercial	527,839	3,161	2.38	511,850	5,053	3.92
Total loans and leases	974,018	7,935	3.25	964,733	10,947	4.51
Other earning assets	83,086	497	2.39	68,018	1,181	6.90
Total earning assets	2,374,926	11,600	1.95	2,038,720	18,064	3.52
Cash and due from banks	32,714			25,588		
Other assets, less allowance for loan and lease losses	332,044			347,915		
Total assets	\$ 2,739,684			\$ 2,412,223		
<b>Interest-bearing liabilities</b>						
U.S. interest-bearing deposits:						
Savings	\$ 61,228	\$ 1	0.01 %	\$ 51,277	\$ 1	0.01 %
Demand and money market deposit accounts	842,987	93	0.04	741,602	1,172	0.63
Consumer CDs and IRAs	45,921	84	0.73	49,811	136	1.08
Negotiable CDs, public funds and other deposits	57,499	31	0.21	63,936	354	2.19
Total U.S. interest-bearing deposits	1,007,635	209	0.08	906,626	1,663	0.73
Non-U.S. interest-bearing deposits:						
Banks located in non-U.S. countries	1,108	—	0.08	1,721	5	1.13
Governments and official institutions	177	—	—	188	—	0.02
Time, savings and other	74,200	18	0.10	70,234	212	1.20
Total non-U.S. interest-bearing deposits	75,485	18	0.09	72,143	217	1.19
Total interest-bearing deposits	1,083,120	227	0.08	978,769	1,880	0.76
Federal funds purchased, securities loaned or sold under agreements to repurchase, short-term borrowings and other interest-bearing liabilities	286,582	(24)	(0.03)	280,123	1,876	2.66
Trading account liabilities	39,689	212	2.13	45,750	303	2.63
Long-term debt	224,254	942	1.67	202,620	1,670	3.28
Total interest-bearing liabilities	1,633,645	1,357	0.33	1,507,262	5,729	1.51
Noninterest-bearing sources:						
Noninterest-bearing deposits	612,368			396,283		
Other liabilities <sup>(5)</sup>	226,348			238,248		
Shareholders' equity	267,323			270,430		
Total liabilities and shareholders' equity	\$ 2,739,684			\$ 2,412,223		
Net interest spread			1.62 %			2.01 %
Impact of noninterest-bearing sources			0.10			0.40
Net interest income/yield on earning assets <sup>(6)</sup>		\$ 10,243	1.72 %		\$ 12,335	2.41 %

<sup>(1)</sup> Includes the impact of interest rate risk management contracts. For more information, see Interest Rate Risk Management for the Banking Book on page 48.

<sup>(2)</sup> Nonperforming loans are included in the respective average loan balances. Income on these nonperforming loans is generally recognized on a cost recovery basis.

<sup>(3)</sup> Includes non-U.S. consumer loans of \$2.9 billion for both the third quarter of 2020 and 2019.

<sup>(4)</sup> Includes U.S. commercial real estate loans of \$59.6 billion and \$57.6 billion, and non-U.S. commercial real estate loans of \$3.7 billion and \$4.5 billion for the third quarter of 2020 and 2019.

<sup>(5)</sup> Includes \$34.2 billion and \$38.1 billion of structured notes and liabilities for the third quarter of 2020 and 2019.

<sup>(6)</sup> Net interest income includes FTE adjustments of \$114 million and \$148 million for the third quarter of 2020 and 2019.

**Table 7** Year-to-Date Average Balances and Interest Rates - FTE Basis

	Average Balance	Interest Income/ Expense <sup>(1)</sup>	Yield/ Rate	Average Balance	Interest Income/ Expense <sup>(1)</sup>	Yield/ Rate
	Nine Months Ended September 30					
	2020			2019		
(Dollars in millions)						
<b>Earning assets</b>						
Interest-bearing deposits with the Federal Reserve, non-U.S. central banks and other banks	\$ 230,265	\$ 311	0.18 %	\$ 126,416	\$ 1,454	1.54 %
Time deposits placed and other short-term investments	9,070	31	0.45	9,377	167	2.38
Federal funds sold and securities borrowed or purchased under agreements to resell	325,356	900	0.37	274,822	3,746	1.82
Trading account assets	149,002	3,247	2.91	148,368	4,016	3.62
Debt securities	491,664	7,477	2.05	445,104	9,051	2.71
Loans and leases <sup>(2)</sup> :						
Residential mortgage	239,623	5,678	3.16	216,744	5,698	3.51
Home equity	39,078	1,013	3.46	45,735	1,732	5.06
Credit card	87,302	6,690	10.24	94,333	7,622	10.80
Direct/Indirect and other consumer <sup>(3)</sup>	89,824	1,962	2.92	90,567	2,475	3.65
Total consumer	455,827	15,343	4.49	447,379	17,527	5.23
U.S. commercial	349,616	7,407	2.83	319,621	10,010	4.19
Non-U.S. commercial	110,096	1,975	2.40	103,625	2,685	3.46
Commercial real estate <sup>(4)</sup>	64,062	1,406	2.93	61,612	2,109	4.58
Commercial lease financing	18,872	427	3.02	20,932	550	3.50
Total commercial	542,646	11,215	2.76	505,790	15,354	4.06
Total loans and leases	998,473	26,558	3.55	953,169	32,881	4.61
Other earning assets	81,079	1,986	3.27	67,431	3,445	6.83
Total earning assets	2,284,909	40,510	2.37	2,024,687	54,760	3.61
Cash and due from banks	30,663			25,787		
Other assets, less allowance for loan and lease losses	331,035			340,469		
Total assets	\$ 2,646,607			\$ 2,390,943		
<b>Interest-bearing liabilities</b>						
U.S. interest-bearing deposits:						
Savings	\$ 56,271	\$ 4	0.01 %	\$ 52,604	\$ 4	0.01 %
Demand and money market deposit accounts	821,324	898	0.15	736,613	3,557	0.65
Consumer CDs and IRAs	50,040	358	0.96	45,688	315	0.92
Negotiable CDs, public funds and other deposits	68,964	296	0.57	66,618	1,129	2.27
Total U.S. interest-bearing deposits	996,599	1,556	0.21	901,523	5,005	0.74
Non-U.S. interest-bearing deposits:						
Banks located in non-U.S. countries	1,604	3	0.27	2,044	16	1.03
Governments and official institutions	174	—	0.02	182	—	0.06
Time, savings and other	74,660	225	0.40	67,740	619	1.22
Total non-U.S. interest-bearing deposits	76,438	228	0.40	69,966	635	1.21
Total interest-bearing deposits	1,073,037	1,784	0.22	971,489	5,640	0.78
Federal funds purchased, securities loaned or sold under agreements to repurchase, short-term borrowings and other interest-bearing liabilities	295,483	1,024	0.46	274,550	5,725	2.79
Trading account liabilities	42,838	764	2.38	46,122	967	2.80
Long-term debt	218,766	3,445	2.10	200,139	5,227	3.49
Total interest-bearing liabilities	1,630,124	7,017	0.58	1,492,300	17,559	1.57
Noninterest-bearing sources:						
Noninterest-bearing deposits	524,994			398,689		
Other liabilities <sup>(5)</sup>	225,427			231,731		
Shareholders' equity	266,062			268,223		
Total liabilities and shareholders' equity	\$ 2,646,607			\$ 2,390,943		
Net interest spread			1.79 %			2.04 %
Impact of noninterest-bearing sources			0.17			0.41
Net interest income/yield on earning assets <sup>(6)</sup>		\$ 33,493	1.96 %		\$ 37,201	2.45 %

<sup>(1)</sup> Includes the impact of interest rate risk management contracts. For more information, see Interest Rate Risk Management for the Banking Book on page 48.

<sup>(2)</sup> Nonperforming loans are included in the respective average loan balances. Income on these nonperforming loans is generally recognized on a cost recovery basis.

<sup>(3)</sup> Includes non-U.S. consumer loans of \$2.9 billion for both the nine months ended September 30, 2020 and 2019.

<sup>(4)</sup> Includes U.S. commercial real estate loans of \$60.4 billion and \$57.0 billion, and non-U.S. commercial real estate loans of \$3.7 billion and \$4.6 billion for the nine months ended September 30, 2020 and 2019.

<sup>(5)</sup> Includes \$35.1 billion and \$34.9 billion of structured notes and liabilities for the nine months ended September 30, 2020 and 2019.

<sup>(6)</sup> Net interest income includes FTE adjustments of \$386 million and \$450 million for the nine months ended September 30, 2020 and 2019.

## Business Segment Operations

### Segment Description and Basis of Presentation

We report our results of operations through four business segments: *Consumer Banking*, *GWIM*, *Global Banking* and *Global Markets*, with the remaining operations recorded in *All Other*. We manage our segments and report their results on an FTE basis. For more information, see Business Segment Operations in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

We periodically review capital allocated to our businesses and allocate capital annually during the strategic and capital planning processes. We utilize a methodology that considers the effect of regulatory capital requirements in addition to internal risk-based capital models. Our internal risk-based capital models use a risk-adjusted methodology incorporating each segment's credit, market, interest rate, business and operational risk components. For more information on the nature of these risks, see Managing Risk on page 23. The

capital allocated to the business segments is referred to as allocated capital. Allocated equity in the reporting units is comprised of allocated capital plus capital for the portion of goodwill and intangibles specifically assigned to the reporting unit. For more information, see *Note 7 – Goodwill and Intangible Assets* to the Consolidated Financial Statements.

For more information on our presentation of financial information on an FTE basis, see Supplemental Financial Data on page 8, and for reconciliations to consolidated total revenue, net income and period-end total assets, see *Note 17 – Business Segment Information* to the Consolidated Financial Statements.

### Key Performance Indicators

We present certain key financial and nonfinancial performance indicators that management uses when evaluating segment results. We believe they are useful to investors because they provide additional information about our segments' operational performance, customer trends and business growth.

## Consumer Banking

	Deposits		Consumer Lending		Total Consumer Banking		
	Three Months Ended September 30						
(Dollars in millions)	2020	2019	2020	2019	2020	2019	% Change
Net interest income	\$ 3,244	\$ 4,196	\$ 2,646	\$ 2,835	\$ 5,890	\$ 7,031	(16) %
Noninterest income:							
Card income	(3)	(11)	1,224	1,300	1,221	1,289	(5)
Service charges	836	1,098	1	—	837	1,098	(24)
All other income	85	232	6	74	91	306	(70)
Total noninterest income	918	1,319	1,231	1,374	2,149	2,693	(20)
Total revenue, net of interest expense	4,162	5,515	3,877	4,209	8,039	9,724	(17)
Provision for credit losses	59	84	420	833	479	917	(48)
Noninterest expense	2,938	2,664	1,904	1,735	4,842	4,399	10
Income before income taxes	1,165	2,767	1,553	1,641	2,718	4,408	(38)
Income tax expense	285	678	381	402	666	1,080	(38)
Net income	\$ 880	\$ 2,089	\$ 1,172	\$ 1,239	\$ 2,052	\$ 3,328	(38)
Effective tax rate <sup>(1)</sup>					24.5 %	24.5 %	
Net interest yield	1.52 %	2.37 %	3.35 %	3.76 %	2.61	3.77	
Return on average allocated capital	29	69	18	20	21	36	
Efficiency ratio	70.60	48.29	49.10	41.23	60.23	45.23	

### Balance Sheet

Average	Three Months Ended September 30						% Change							
	2020		2019		2020			2019						
Total loans and leases	\$	5,046	\$	5,404	\$	313,705	\$	298,428	\$	318,751	\$	303,832		5
Total earning assets <sup>(2)</sup>		849,189		703,926		314,079		299,041		896,867		739,802		21
Total assets <sup>(2)</sup>		886,406		735,913		316,107		308,991		936,112		781,739		20
Total deposits		853,452		703,628		7,547		5,711		860,999		709,339		21
Allocated capital		12,000		12,000		26,500		25,000		38,500		37,000		4

<sup>(1)</sup> Estimated at the segment level only.

<sup>(2)</sup> In segments and businesses where the total of liabilities and equity exceeds assets, we allocate assets from *All Other* to match the segments' and businesses' liabilities and allocated shareholders' equity. As a result, total earning assets and total assets of the businesses may not equal total *Consumer Banking*.

	Deposits		Consumer Lending		Total Consumer Banking		
	Nine Months Ended September 30						
(Dollars in millions)	2020	2019	2020	2019	2020	2019	% Change
Net interest income	\$ 10,491	\$ 12,867	\$ 8,252	\$ 8,386	\$ 18,743	\$ 21,253	(12) %
Noninterest income:							
Card income	(15)	(24)	3,399	3,778	3,384	3,754	(10)
Service charges	2,537	3,162	1	1	2,538	3,163	(20)
All other income	244	673	111	230	355	903	(61)
Total noninterest income	2,766	3,811	3,511	4,009	6,277	7,820	(20)
Total revenue, net of interest expense	13,257	16,678	11,763	12,395	25,020	29,073	(14)
Provision for credit losses	328	173	5,433	2,665	5,761	2,838	103
Noninterest expense	8,532	7,993	5,539	5,185	14,071	13,178	7
Income before income taxes	4,397	8,512	791	4,545	5,188	13,057	(60)
Income tax expense	1,077	2,086	194	1,113	1,271	3,199	(60)
Net income	\$ 3,320	\$ 6,426	\$ 597	\$ 3,432	\$ 3,917	\$ 9,858	(60)
Effective tax rate <sup>(1)</sup>					24.5 %	24.5 %	
Net interest yield	1.76 %	2.46 %	3.51 %	3.83 %	2.98	3.87	
Return on average allocated capital	37	72	3	18	14	36	
Efficiency ratio	64.36	47.92	47.09	41.84	56.24	45.33	

#### Balance Sheet

	Nine Months Ended September 30						% Change
	2020	2019	2020	2019	2020	2019	
	September 30 2020	December 31 2019	September 30 2020	December 31 2019	September 30 2020	December 31 2019	
Average							
Total loans and leases	\$ 5,264	\$ 5,350	\$ 313,820	\$ 292,188	\$ 319,084	\$ 297,538	7 %
Total earning assets <sup>(2)</sup>	794,370	699,944	314,275	292,641	838,792	735,014	14
Total assets <sup>(2)</sup>	829,505	731,593	318,214	302,862	877,866	776,884	13
Total deposits	796,591	699,280	6,411	5,242	803,002	704,522	14
Allocated capital	12,000	12,000	26,500	25,000	38,500	37,000	4
Period end							
Total loans and leases	\$ 4,909	\$ 5,467	\$ 307,538	\$ 311,942	\$ 312,447	\$ 317,409	(2) %
Total earning assets <sup>(2)</sup>	859,659	724,573	307,985	312,684	906,994	760,174	19
Total assets <sup>(2)</sup>	897,182	758,459	310,981	322,717	947,513	804,093	18
Total deposits	864,100	725,665	7,922	5,080	872,022	730,745	19

See page 12 for footnotes.

*Consumer Banking*, which is comprised of Deposits and Consumer Lending, offers a diversified range of credit, banking and investment products and services to consumers and small businesses. For more information about *Consumer Banking*, including our Deposits and Consumer Lending businesses, see Business Segment Operations in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

## Consumer Banking Results

### Three-Month Comparison

Net income for *Consumer Banking* decreased \$1.3 billion to \$2.1 billion primarily due to lower revenue and higher noninterest expense, partially offset by lower provision for credit losses.

Net interest income decreased \$1.1 billion to \$5.9 billion primarily due to lower interest rates, partially offset by the benefit of higher deposit and loan balances. Noninterest income decreased \$544 million to \$2.1 billion driven by a decline in service charges primarily due to higher deposit balances and lower card income due to decreased client activity, as well as lower other income due to the allocation of asset and liability management (ALM) results.

The provision for credit losses decreased \$438 million to \$479 million primarily driven by a release in reserves due to an improved macroeconomic outlook and lower credit card balances.

Noninterest expense increased \$443 million to \$4.8 billion primarily driven by incremental expense to support customers and employees during COVID-19, as well as the cost of increased client activity and continued investments for business growth, including the merchant services platform.

The return on average allocated capital was 21 percent, down from 36 percent, driven by lower net income, and to a lesser extent, an increase in allocated capital. For information on capital allocated to the business segments, see Business Segment Operations on page 12.

### Nine-Month Comparison

Net income for *Consumer Banking* decreased \$5.9 billion to \$3.9 billion primarily due to lower revenue and a higher provision for credit losses.

Net interest income decreased \$2.5 billion to \$18.7 billion and noninterest income decreased \$1.5 billion to \$6.3 billion. The declines were primarily driven by the same factors as described in the three-month discussion.

The provision for credit losses increased \$2.9 billion to \$5.8 billion primarily due to the weaker economic outlook related to COVID-19. Noninterest expense increased \$893 million to \$14.1 billion primarily driven by the same factors as described in the three-month discussion.

The return on average allocated capital was 14 percent, down from 36 percent, driven by lower net income and, to a lesser extent, an increase in allocated capital.

## Deposits

### Three-Month Comparison

Net income for Deposits decreased \$1.2 billion to \$880 million primarily driven by lower revenue. Net interest income declined \$952 million to \$3.2 billion primarily due to lower interest rates, partially offset by the benefit of growth in deposits. Noninterest income decreased \$401 million to \$918 million. The decline in noninterest income was primarily driven by lower service charges due to higher deposit balances and lower client activity related to the impact of COVID-19, as well as lower other income due to the allocation of ALM results.

The provision for credit losses decreased \$25 million to \$59 million. Noninterest expense increased \$274 million to \$2.9 billion driven by continued investments in the business and incremental expense to support customers and employees during the COVID-19 pandemic.

Average deposits increased \$149.8 billion to \$853.5 billion. The increase was driven by strong organic growth of \$101.7 billion in checking and time deposits and \$47.7 billion in traditional savings and money market savings.

### Nine-Month Comparison

Net income for Deposits decreased \$3.1 billion to \$3.3 billion primarily driven by lower revenue. Net interest income declined \$2.4 billion to \$10.5 billion primarily due to the same factors as described in the three-month discussion. Noninterest income decreased \$1.0 billion to \$2.8 billion primarily due to the same factors as described in the three-month discussion.

The provision for credit losses increased \$155 million to \$328 million due to the weaker economic outlook related to COVID-19. Noninterest expense increased \$539 million to \$8.5 billion due to the same factors as described in the three-month discussion.

Average deposits increased \$97.3 billion to \$796.6 billion. The increase was driven by strong organic growth of \$71.5 billion in checking and time deposits and \$25.7 billion in traditional savings and money market savings.

The following table provides key performance indicators for Deposits. Management uses these metrics, and we believe they are useful to investors because they provide additional information to evaluate our deposit profitability and digital/mobile trends.

## Key Statistics – Deposits

Total deposit spreads (excludes noninterest costs) <sup>(1)</sup>

### Period End

Consumer investment assets (in millions) <sup>(2)</sup>

Active digital banking users (units in thousands) <sup>(3)</sup>

Active mobile banking users (units in thousands) <sup>(4)</sup>

Financial centers

ATMs

Three Months Ended September 30		Nine Months Ended September 30	
2020	2019	2020	2019
1.87 %	2.35 %	1.98 %	2.38 %
		\$ 266,733	\$ 223,199
		39,267	37,981
		30,601	28,703
		4,309	4,302
		16,962	16,626

<sup>(1)</sup> Includes deposits held in Consumer Lending.

<sup>(2)</sup> Includes client brokerage assets, deposit sweep balances and AUM in Consumer Banking.

<sup>(3)</sup> Active digital banking users represents mobile and/or online users over the last three months.

<sup>(4)</sup> Active mobile banking users represents mobile users over the last three months.

Consumer investment assets increased \$43.5 billion driven by client flows and market performance. Active mobile banking users increased 1.9 million reflecting continuing changes in our customers' banking preferences. We had a net increase of seven financial centers as we continued to optimize our consumer banking network.

## Consumer Lending

### Three-Month Comparison

Net income for Consumer Lending was \$1.2 billion, a decrease of \$67 million primarily due to lower revenue and higher noninterest expense, partially offset by a decline in provision for credit losses. Net interest income decreased \$189 million to \$2.6 billion primarily due to lower interest rates, partially offset by loan growth. Noninterest income decreased \$143 million to \$1.2 billion primarily driven by lower card income due to lower client activity as well as lower other income due to the allocation of ALM results.

The provision for credit losses decreased \$413 million to \$420 million primarily driven by a release in reserves due to an improved macroeconomic outlook and lower credit card

balances. Noninterest expense increased \$169 million to \$1.9 billion primarily driven by investments in the business and incremental expense to support customers and employees during the COVID-19 pandemic.

Average loans increased \$15.3 billion to \$313.7 billion primarily driven by an increase in residential mortgages and PPP loans, partially offset by a decline in credit cards.

### Nine-Month Comparison

Net income for Consumer Lending was \$597 million, a decrease of \$2.8 billion primarily due to higher provision for credit losses. Net interest income declined \$134 million to \$8.3 billion and noninterest income decreased \$498 million to \$3.5 billion primarily driven by the same factors as described in the three-month discussion.

The provision for credit losses increased \$2.8 billion to \$5.4 billion primarily due to the weaker economic outlook related to COVID-19. Noninterest expense increased \$354 million to \$5.5 billion primarily driven by the same factors as described in the three-month discussion.

Average loans increased \$21.6 billion to \$313.8 billion primarily driven by the same factors as described in the three-month discussion.



The following table provides key performance indicators for Consumer Lending. Management uses these metrics, and we believe they are useful to investors because they provide additional information about loan growth and profitability.

### Key Statistics – Consumer Lending

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
<b>Total credit card</b> <sup>(1)</sup>				
Gross interest yield <sup>(2)</sup>	10.16 %	10.85 %	10.21 %	10.80 %
Risk-adjusted margin <sup>(3)</sup>	9.66	8.45	8.66	8.14
New accounts (in thousands)	487	1,172	1,991	3,274
Purchase volumes	\$ 64,060	\$ 71,096	\$ 182,133	\$ 204,135
<b>Debit card purchase volumes</b>	\$ 102,004	\$ 90,942	\$ 280,222	\$ 267,204

<sup>(1)</sup> Includes GWIM's credit card portfolio.

<sup>(2)</sup> Calculated as the effective annual percentage rate divided by average loans.

<sup>(3)</sup> Calculated as the difference between total revenue, net of interest expense, and net credit losses divided by average loans.

During the three and nine months ended September 30, 2020, total risk-adjusted margin increased 121 bps and 52 bps compared to the same periods in 2019 primarily due to a decrease in the proportion of customers who pay their balances in full each month. During the three and nine months ended September 30, 2020, total credit card purchase volumes declined \$7.0 billion to \$64.1 billion, and \$22.0 billion to \$182.1 billion compared to the same periods in 2019. The declines in credit card purchase volumes were driven by the

impact of COVID-19. While overall spending improved during the third quarter of 2020, spending for travel and entertainment remained lower compared to the same periods a year ago. During the three and nine months ended September 30, 2020, debit card purchase volumes increased \$11.1 billion to \$102.0 billion and \$13.0 billion to \$280.2 billion compared to the same periods in 2019. Debit card purchase volumes improved late in the second quarter of 2020 and continued throughout the third quarter of 2020 as businesses reopened.

### Key Statistics – Residential Mortgage Loan Production <sup>(1)</sup>

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
<b>Consumer Banking:</b>				
First mortgage	\$ 7,298	\$ 13,622	\$ 35,228	\$ 34,534
Home equity	738	2,219	6,555	7,109
<b>Total</b> <sup>(2)</sup>				
First mortgage	\$ 13,360	\$ 20,664	\$ 55,422	\$ 50,353
Home equity	984	2,539	7,691	8,132

<sup>(1)</sup> The loan production amounts represent the unpaid principal balance of loans and, in the case of home equity, the principal amount of the total line of credit.

<sup>(2)</sup> In addition to loan production in *Consumer Banking*, there is also first mortgage and home equity loan production in *GWIM*.

First mortgage loan originations in *Consumer Banking* and for the total Corporation decreased \$6.3 billion and \$7.3 billion for the three months ended September 30, 2020 compared to the same period in 2019 due to a decline in applications. First mortgage loan originations in *Consumer Banking* and for the total Corporation increased \$694 million and \$5.1 billion for the nine months ended September 30, 2020 compared to the same period in 2019 primarily driven by an increase in applications

during the first quarter of 2020 due to a lower interest rate environment.

Home equity production in *Consumer Banking* and for the total Corporation decreased \$1.5 billion and \$1.6 billion for the three months ended September 30, 2020 and \$554 million and \$441 million for the nine months ended September 30, 2020 primarily driven by a decline in applications.

## Global Wealth & Investment Management

	Three Months Ended September 30			% Change	Nine Months Ended September 30			% Change
	2020	2019			2020	2019		
(Dollars in millions)								
Net interest income	\$ 1,237	\$ 1,609		(23) %	\$ 4,186	\$ 4,917		(15) %
Noninterest income:								
Investment and brokerage services	3,105	3,001		3	9,081	8,805		3
All other income	204	294		(31)	640	903		(29)
Total noninterest income	3,309	3,295		—	9,721	9,708		—
Total revenue, net of interest expense	4,546	4,904		(7)	13,907	14,625		(5)
Provision for credit losses	24	37		(35)	349	63		n/m
Noninterest expense	3,530	3,414		3	10,593	10,302		3
Income before income taxes	992	1,453		(32)	2,965	4,260		(30)
Income tax expense	243	356		(32)	726	1,044		(30)
Net income	\$ 749	\$ 1,097		(32)	\$ 2,239	\$ 3,216		(30)
Effective tax rate	24.5 %	24.5 %			24.5 %	24.5 %		
Net interest yield	1.53	2.30			1.81	2.35		
Return on average allocated capital	20	30			20	30		
Efficiency ratio	77.63	69.61			76.17	70.44		

### Balance Sheet

	Three Months Ended September 30			% Change	Nine Months Ended September 30			% Change
	2020	2019			2020	2019		
Average								
Total loans and leases	\$ 185,587	\$ 170,414		9 %	\$ 182,138	\$ 167,069		9 %
Total earning assets	321,410	277,343		16	309,240	279,784		11
Total assets	333,794	289,460		15	321,565	292,114		10
Total deposits	291,845	254,460		15	280,828	256,720		9
Allocated capital	15,000	14,500		3	15,000	14,500		3
Period end								
Total loans and leases	\$ 187,211	\$ 176,600		6 %				
Total earning assets	324,889	287,201		13				
Total assets	337,576	299,770		13				
Total deposits	295,893	263,113		12				

n/m = not meaningful

GWIM consists of two primary businesses: Merrill Lynch Global Wealth Management (MLGWM) and Bank of America Private Bank. For more information about GWIM, see Business Segment Operations in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

### Three-Month Comparison

Net income for GWIM decreased \$348 million to \$749 million primarily due to lower revenue and higher noninterest expense. The operating margin was 22 percent compared to 30 percent a year ago.

Net interest income decreased \$372 million to \$1.2 billion due to the impact of lower interest rates, partially offset by the benefit of strong deposit and loan growth.

Noninterest income, which primarily includes investment and brokerage services income, remained relatively unchanged at \$3.3 billion, as the benefits of higher market valuations and positive AUM flows were offset by declines in AUM pricing as well as lower other income due to the allocation of ALM results.

The provision for credit losses decreased \$13 million to \$24 million. Noninterest expense increased \$116 million to \$3.5 billion primarily driven by higher revenue-related incentives and investments in primary sales professionals.

The return on average allocated capital was 20 percent, down from 30 percent, due to lower net income and, to a lesser extent, a small increase in allocated capital.

Average loans increased \$15.2 billion to \$185.6 billion primarily driven by residential mortgage and custom lending. Average deposits increased \$37.4 billion to \$291.8 billion primarily driven by inflows resulting from client responses to market volatility and lower spending.

MLGWM revenue of \$3.7 billion decreased eight percent primarily driven by the impact of lower interest rates, partially offset by the benefits of higher market valuations and positive AUM flows.

Bank of America Private Bank revenue of \$798 million decreased six percent primarily driven by the impact of lower interest rates.

### Nine-Month Comparison

Net income for GWIM decreased \$977 million to \$2.2 billion primarily due to lower revenue, higher noninterest expense and higher provision for credit losses. The operating margin was 21 percent compared to 29 percent a year ago.

Net interest income decreased \$731 million to \$4.2 billion due to the same factors as described in the three-month discussion.

Noninterest income, which primarily includes investment and brokerage services income, remained relatively unchanged at \$9.7 billion due to the same factors as described in the three-month discussion.

The provision for credit losses increased \$286 million to \$349 million primarily due to the weaker economic outlook related to COVID-19. Noninterest expense increased \$291 million to \$10.6 billion, primarily due to investments for business growth along with higher revenue-related incentives.

The return on average allocated capital was 20 percent, down from 30 percent, due to lower net income and, to a lesser extent, a small increase in allocated capital.

Average loans increased \$15.1 billion to \$182.1 billion, and

average deposits increased \$24.1 billion to \$280.8 billion due to the same factors as described in the three-month discussion.

MLGWM revenue of \$11.4 billion decreased five percent primarily driven by the impact of lower interest rates and AUM pricing, partially offset by higher market valuations and positive AUM flows.

Bank of America Private Bank revenue of \$2.5 billion decreased four percent primarily driven by the impact of lower interest rates.

## Key Indicators and Metrics

(Dollars in millions, except as noted)

### Revenue by Business

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
Merrill Lynch Global Wealth Management	\$ 3,748	\$ 4,053	\$ 11,446	\$ 12,065
Bank of America Private Bank	798	851	2,461	2,559
<b>Total revenue, net of interest expense</b>	<b>\$ 4,546</b>	<b>\$ 4,904</b>	<b>\$ 13,907</b>	<b>\$ 14,624</b>

### Client Balances by Business, at period end

Merrill Lynch Global Wealth Management			\$ 2,570,252	\$ 2,443,614
Bank of America Private Bank			496,369	462,347
<b>Total client balances</b>			<b>\$ 3,066,621</b>	<b>\$ 2,905,961</b>

### Client Balances by Type, at period end

Assets under management			\$ 1,286,145	\$ 1,212,120
Brokerage and other assets			1,344,538	1,305,926
Deposits			295,893	252,466
Loans and leases <sup>(1)</sup>			189,952	175,579
Less: Managed deposits in assets under management			(49,907)	(40,130)
<b>Total client balances</b>			<b>\$ 3,066,621</b>	<b>\$ 2,905,961</b>

### Assets Under Management Rollforward

Assets under management, beginning of period	\$ 1,219,748	\$ 1,203,783	\$ 1,275,555	\$ 1,072,234
Net client flows	1,385	5,529	11,993	16,721
Market valuation/other	65,012	2,808	(1,403)	123,165
<b>Total assets under management, end of period</b>	<b>\$ 1,286,145</b>	<b>\$ 1,212,120</b>	<b>\$ 1,286,145</b>	<b>\$ 1,212,120</b>

### Associates, at period end

Number of financial advisors			17,760	17,657
Total wealth advisors, including financial advisors			19,673	19,672
Total primary sales professionals, including financial advisors and wealth advisors			21,271	20,775

### Merrill Lynch Global Wealth Management Metric

Financial advisor productivity <sup>(2)</sup> (in thousands)	\$ 1,125	\$ 1,096	\$ 1,111	\$ 1,073
--	----------	----------	----------	----------

### Bank of America Private Bank Metric, at period end

Primary sales professionals			1,770	1,811
-----------------------------	--	--	-------	-------

<sup>(1)</sup> Includes margin receivables which are classified in customer and other receivables on the Consolidated Balance Sheet.

<sup>(2)</sup> For a definition, see Key Metrics on page 104.

## Client Balances

Client balances increased \$160.7 billion, or six percent, to \$3.1 trillion at September 30, 2020 compared to September 30, 2019. The increase in client balances was primarily due to higher market valuations and positive client flows.

## Global Banking

(Dollars in millions)	Three Months Ended September 30			Nine Months Ended September 30		
	2020	2019	% Change	2020	2019	% Change
Net interest income	\$ 2,028	\$ 2,617	(23 %)	\$ 7,003	\$ 8,116	(14) %
Noninterest income:						
Service charges	845	763	11	2,379	2,225	7
Investment banking fees	970	902	8	2,912	2,328	25
All other income	674	930	(28)	1,914	2,673	(28)
Total noninterest income	2,489	2,595	(4)	7,205	7,226	—
Total revenue, net of interest expense	4,517	5,212	(13)	14,208	15,342	(7)
Provision for credit losses	883	120	n/m	4,849	356	n/m
Noninterest expense	2,365	2,219	7	6,910	6,697	3
Income before income taxes	1,269	2,873	(56)	2,449	8,289	(70)
Income tax expense	343	776	(56)	661	2,238	(70)
Net income	\$ 926	\$ 2,097	(56)	\$ 1,788	\$ 6,051	(70)
Effective tax rate	27.0 %	27.0 %		27.0 %	27.0 %	
Net interest yield	1.61	2.69		1.96	2.84	
Return on average allocated capital	9	20		6	20	
Efficiency ratio	52.36	42.58		48.63	43.65	

### Balance Sheet

Average	Three Months Ended September 30			Nine Months Ended September 30		
	2020	2019	% Change	2020	2019	% Change
Total loans and leases	\$ 373,118	\$ 377,109	(1 %)	\$ 394,331	\$ 373,275	6 %
Total earning assets	501,572	385,999	30	477,606	382,711	25
Total assets	557,889	441,186	26	534,061	437,570	22
Total deposits	471,288	360,457	31	449,273	357,413	26
Allocated capital	42,500	41,000	4	42,500	41,000	4

Period end	September 30		% Change
	2020	2019	
Total loans and leases	\$ 356,919	\$ 379,268	(6) %
Total earning assets	496,825	407,180	22
Total assets	553,776	464,032	19
Total deposits	465,399	383,180	21

n/m = not meaningful

*Global Banking*, which includes Global Corporate Banking, Global Commercial Banking, Business Banking and Global Investment Banking, provides a wide range of lending-related products and services, integrated working capital management and treasury solutions, and underwriting and advisory services through our network of offices and client relationship teams. For more information about *Global Banking*, see Business Segment Operations in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

### Three-Month Comparison

Net income for *Global Banking* decreased \$1.2 billion to \$926 million primarily driven by higher provision for credit losses and lower revenue.

Revenue decreased \$695 million to \$4.5 billion driven by lower net interest income and lower noninterest income. Net interest income decreased \$589 million to \$2.0 billion primarily due to lower interest rates, partially offset by deposit growth and higher credit spreads.

Noninterest income decreased \$106 million to \$2.5 billion primarily due to lower leasing-related revenue and the allocation of ALM results, partially offset by higher investment banking fees and service charges.

The provision for credit losses increased \$763 million to \$883 million primarily due to a reserve build for industries that are more heavily impacted by COVID-19, such as travel and entertainment. Noninterest expense increased \$146 million to \$2.4 billion due to continued investments in the business, including the merchant services platform.

The return on average allocated capital was nine percent in 2020 compared to 20 percent in 2019, due to lower net income, and to a lesser extent, an increase in allocated capital. For information on capital allocated to the business segments, see Business Segment Operations on page 12.

### Nine-Month Comparison

Net income for *Global Banking* decreased \$4.3 billion to \$1.8 billion primarily driven by higher provision for credit losses as well as lower revenue.

Revenue decreased \$1.1 billion to \$14.2 billion driven by lower net interest income. Net interest income decreased \$1.1 billion to \$7.0 billion primarily driven by lower interest rates, partially offset by higher loan and deposit balances.

Noninterest income of \$7.2 billion remained relatively unchanged as lower valuation adjustments on the fair value option loan portfolio and the allocation of ALM results were largely offset by higher investment banking fees.

The provision for credit losses increased \$4.5 billion to \$4.8 billion primarily due to the weaker economic outlook related to COVID-19. Noninterest expense increased \$213 million primarily due to continued investments in the business, partially offset by lower revenue-related incentives and COVID-19 related costs.

The return on average allocated capital was six percent in 2020 compared to 20 percent in 2019, due to lower net income and, to a lesser extent, an increase in allocated capital. For

information on capital allocated to the business segments, see Business Segment Operations on page 12.

## Global Corporate, Global Commercial and Business Banking

The table below and following discussion present a summary of the results, which exclude certain investment banking, merchant services and PPP activities in *Global Banking*.

### Global Corporate, Global Commercial and Business Banking

	Global Corporate Banking		Global Commercial Banking		Business Banking		Total	
	Three Months Ended September 30							
(Dollars in millions)	2020	2019	2020	2019	2020	2019	2020	2019
Revenue								
Business Lending	\$ 791	\$ 1,024	\$ 953	\$ 1,020	\$ 59	\$ 91	\$ 1,803	\$ 2,135
Global Transaction Services	658	967	745	862	209	267	1,612	2,096
Total revenue, net of interest expense	\$ 1,449	\$ 1,991	\$ 1,698	\$ 1,882	\$ 268	\$ 358	\$ 3,415	\$ 4,231

#### Balance Sheet

<b>Average</b>								
Total loans and leases	\$ 174,235	\$ 179,191	\$ 175,536	\$ 183,031	\$ 13,972	\$ 14,868	\$ 363,743	\$ 377,090
Total deposits	218,593	175,914	201,523	143,835	50,946	40,707	471,062	360,456

	Global Corporate Banking		Global Commercial Banking		Business Banking		Total	
	Nine Months Ended September 30							
(Dollars in millions)	2020	2019	2020	2019	2020	2019	2020	2019
Revenue								
Business Lending	\$ 2,658	\$ 2,992	\$ 2,815	\$ 3,100	\$ 207	\$ 275	\$ 5,680	\$ 6,367
Global Transaction Services	2,314	2,979	2,432	2,642	682	800	5,428	6,421
Total revenue, net of interest expense	\$ 4,972	\$ 5,971	\$ 5,247	\$ 5,742	\$ 889	\$ 1,075	\$ 11,108	\$ 12,788

#### Balance Sheet

<b>Average</b>								
Total loans and leases	\$ 186,220	\$ 177,071	\$ 188,147	\$ 181,091	\$ 14,721	\$ 15,108	\$ 389,088	\$ 373,270
Total deposits	214,327	175,239	188,271	142,665	46,599	39,522	449,197	357,426

<b>Period end</b>								
Total loans and leases	\$ 165,498	\$ 179,291	\$ 168,385	\$ 183,314	\$ 13,665	\$ 14,919	\$ 347,548	\$ 377,524
Total deposits	212,564	183,678	200,591	147,119	51,889	41,089	465,044	371,886

Business Lending revenue decreased \$332 million and \$687 million for the three and nine months ended September 30, 2020 compared to the same periods in 2019. The decrease was primarily driven by lower interest rates.

Global Transaction Services revenue decreased \$484 million and \$993 million for the three and nine months ended September 30, 2020 driven by the allocation of ALM results, partially offset by the impact of higher deposit balances.

Average loans and leases decreased four percent for the three months ended September 30, 2020 compared to the same period in 2019 driven by client paydowns. Average loans and leases increased four percent for the nine months ended September 30, 2020 driven by growth in the commercial and industrial loan portfolio. Average deposits increased 31 percent and 26 percent for the three and nine months ended September 30, 2020 primarily due to client responses to market volatility, government stimulus and placement of credit draws.

## Global Investment Banking

Client teams and product specialists underwrite and distribute debt, equity and loan products, and provide advisory services and tailored risk management solutions. The economics of certain investment banking and underwriting activities are shared primarily between *Global Banking* and *Global Markets* under an internal revenue-sharing arrangement. *Global Banking* originates certain deal-related transactions with our corporate and commercial clients that are executed and distributed by *Global Markets*. To provide a complete discussion of our consolidated investment banking fees, the following table presents total Corporation investment banking fees and the portion attributable to *Global Banking*.

## Investment Banking Fees

	Global Banking		Total Corporation		Global Banking		Total Corporation	
	Three Months Ended September 30				Nine Months Ended September 30			
(Dollars in millions)	2020	2019	2020	2019	2020	2019	2020	2019
<b>Products</b>								
Advisory	\$ 356	\$ 427	\$ 397	\$ 452	\$ 948	\$ 984	\$ 1,072	\$ 1,083
Debt issuance	320	356	740	816	1,247	1,007	2,725	2,310
Equity issuance	294	119	664	308	717	337	1,687	937
<b>Gross investment banking fees</b>	<b>970</b>	<b>902</b>	<b>1,801</b>	<b>1,576</b>	<b>2,912</b>	<b>2,328</b>	<b>5,484</b>	<b>4,330</b>
Self-led deals	(13)	(11)	(32)	(43)	(73)	(54)	(168)	(162)
<b>Total investment banking fees</b>	<b>\$ 957</b>	<b>\$ 891</b>	<b>\$ 1,769</b>	<b>\$ 1,533</b>	<b>\$ 2,839</b>	<b>\$ 2,274</b>	<b>\$ 5,316</b>	<b>\$ 4,168</b>

Total Corporation investment banking fees, excluding self-led deals, of \$1.8 billion and \$5.3 billion, which are primarily included within *Global Banking* and *Global Markets*, increased 15 percent and 28 percent for the three and nine months ended September 30, 2020 compared to the same periods in 2019 primarily driven by higher equity issuance fees.

## Global Markets

	Three Months Ended September 30			Nine Months Ended September 30		
(Dollars in millions)	2020	2019	% Change	2020	2019	% Change
Net interest income	\$ 1,108	\$ 1,016	9 %	\$ 3,558	\$ 2,780	28 %
Noninterest income:						
Investment and brokerage services	440	419	5	1,487	1,296	15
Investment banking fees	739	585	26	2,280	1,707	34
Market making and similar activities	1,726	1,580	9	7,059	5,623	26
All other income	270	263	3	475	783	(39)
<b>Total noninterest income</b>	<b>3,175</b>	<b>2,847</b>	<b>12</b>	<b>11,301</b>	<b>9,409</b>	<b>20</b>
<b>Total revenue, net of interest expense</b>	<b>4,283</b>	<b>3,863</b>	<b>11</b>	<b>14,859</b>	<b>12,189</b>	<b>22</b>
Provision for credit losses	21	—	n/m	233	(18)	n/m
<b>Noninterest expense</b>	<b>3,104</b>	<b>2,677</b>	<b>16</b>	<b>8,598</b>	<b>8,109</b>	<b>6</b>
Income before income taxes	1,158	1,186	(2)	6,028	4,098	47
Income tax expense	301	338	(11)	1,567	1,168	34
<b>Net income</b>	<b>\$ 857</b>	<b>\$ 848</b>	<b>1</b>	<b>\$ 4,461</b>	<b>\$ 2,930</b>	<b>52</b>
Effective tax rate	26.0 %	28.5 %		26.0 %	28.5 %	
Return on average allocated capital	9	10		17	11	
Efficiency ratio	72.42	69.31		57.86	66.53	

### Balance Sheet

	Three Months Ended September 30			Nine Months Ended September 30		
	2020	2019	% Change	2020	2019	% Change
<b>Average</b>						
Trading-related assets:						
Trading account securities	\$ 251,735	\$ 261,182	(4) %	\$ 241,753	\$ 246,077	(2) %
Reverse repurchases	100,395	110,907	(9)	106,968	117,087	(9)
Securities borrowed	86,508	80,641	7	88,734	82,772	7
Derivative assets	46,676	46,066	1	47,687	43,922	9
<b>Total trading-related assets</b>	<b>485,314</b>	<b>498,796</b>	<b>(3)</b>	<b>485,142</b>	<b>489,858</b>	<b>(1)</b>
Total loans and leases	72,319	71,589	1	72,702	70,757	3
Total earning assets	476,182	476,919	—	485,448	474,481	2
Total assets	680,983	687,398	(1)	685,685	679,040	1
Total deposits	56,475	30,155	87	45,002	30,878	46
Allocated capital	36,000	35,000	3	36,000	35,000	3
<b>Period end</b>						
Total trading-related assets	\$ 477,552	\$ 452,499	6 %			
Total loans and leases	75,475	72,993	3			
Total earning assets	461,855	471,701	(2)			
Total assets	676,242	641,809	5			
Total deposits	56,727	34,676	64			

n/m = not meaningful

*Global Markets* offers sales and trading services and research services to institutional clients across fixed-income, credit, currency, commodity and equity businesses. *Global Markets* product coverage includes securities and derivative products in both the primary and secondary markets. For more information

about *Global Markets*, see Business Segment Operations in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

The following explanations for current period-over-period changes for *Global Markets*, including those disclosed under Sales and Trading Revenue, are the same for amounts including

and excluding net DVA. Amounts excluding net DVA are a non-GAAP financial measure. For more information on net DVA, see Supplemental Financial Data on page 8.

### Three-Month Comparison

Net income for *Global Markets* remained relatively unchanged at \$857 million. Net DVA losses were \$116 million compared to losses of \$15 million in the prior-year period. Excluding net DVA, net income increased \$86 million to \$945 million. These increases were primarily driven by higher revenue, partially offset by higher noninterest expense.

Revenue increased \$420 million to \$4.3 billion primarily driven by higher sales and trading revenue, investment banking fees and card income. Sales and trading revenue increased \$16 million, and excluding net DVA, increased \$117 million driven by increased client activity in Asian equities and stronger performance in mortgage and foreign exchange products.

Noninterest expense increased \$427 million to \$3.1 billion driven by higher activity-based expenses for both card and trading.

Average total assets decreased \$6.4 billion to \$681.0 billion driven by increased balance sheet efficiency in securities financing matched-book activity and lower levels of inventory in FICC, partially offset by higher client balances in Global Equities.

The return on average allocated capital was nine percent, down from 10 percent, primarily due to an increase in allocated capital. For more information on capital allocated to the business segments, see Business Segment Operations on page 12.

### Nine-Month Comparison

Net income for *Global Markets* increased \$1.5 billion to \$4.5 billion. Net DVA losses were \$77 million compared to losses of \$136 million in the prior-year period. Excluding net DVA, net income increased \$1.5 billion to \$4.5 billion. These increases

were primarily driven by an increase in revenue, partially offset by higher noninterest expense and provision for credit losses.

Revenue increased \$2.7 billion to \$14.9 billion primarily driven by higher sales and trading revenue and investment banking fees. Sales and trading revenue increased \$2.1 billion, and excluding net DVA, increased \$2.0 billion. These increases were driven by higher revenue across FICC and Equities.

The provision for credit losses increased \$251 million primarily due to the weaker economic outlook related to COVID-19. Noninterest expense increased \$489 million to \$8.6 billion due to the same factors as described in the three-month discussion.

Average total assets increased \$6.6 billion to \$685.7 billion primarily due to increased levels of inventory in FICC to facilitate expected client demand. Period-end total assets increased \$34.4 billion since December 31, 2019 to \$676.2 billion primarily driven by Equities due to increased hedging of client activity with stock positions relative to derivative transactions at year end.

The return on average allocated capital was 17 percent, up from 11 percent, reflecting higher net income, partially offset by an increase in allocated capital.

## Sales and Trading Revenue

For a description of sales and trading revenue, see Business Segment Operations in the MD&A of the Corporation's 2019 Annual Report on Form 10-K. The following table and related discussion present sales and trading revenue, substantially all of which is in *Global Markets*, with the remainder in *Global Banking*. In addition, the following table and related discussion present sales and trading revenue, excluding net DVA, which is a non-GAAP financial measure. For more information on net DVA, see Supplemental Financial Data on page 8.

## Sales and Trading Revenue <sup>(1, 2, 3)</sup>

(Dollars in millions)

### Sales and trading revenue <sup>(2)</sup>

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
Fixed income, currencies and commodities	\$ 2,019	\$ 2,056	\$ 7,905	\$ 6,435
Equities	1,205	1,152	4,105	3,478
<b>Total sales and trading revenue</b>	<b>\$ 3,224</b>	<b>\$ 3,208</b>	<b>\$ 12,010</b>	<b>\$ 9,913</b>

### Sales and trading revenue, excluding net DVA <sup>(4)</sup>

Fixed income, currencies and commodities	\$ 2,126	\$ 2,074	\$ 7,983	\$ 6,562
Equities	1,214	1,149	4,104	3,487
<b>Total sales and trading revenue, excluding net DVA</b>	<b>\$ 3,340</b>	<b>\$ 3,223</b>	<b>\$ 12,087</b>	<b>\$ 10,049</b>

<sup>(1)</sup> For more information on sales and trading revenue, see Note 3 – Derivatives to the Consolidated Financial Statements.

<sup>(2)</sup> Includes FTE adjustments of \$38 million and \$138 million for the three and nine months ended September 30, 2020 compared to \$52 million and \$131 million for the same periods in 2019.

<sup>(3)</sup> Includes *Global Banking* sales and trading revenue of \$86 million and \$378 million for the three and nine months ended September 30, 2020 compared to \$152 million and \$399 million for the same periods in 2019.

<sup>(4)</sup> FICC and Equities sales and trading revenue, excluding net DVA, is a non-GAAP financial measure. FICC net DVA losses were \$107 million and \$78 million for the three and nine months ended September 30, 2020 compared to losses of \$18 million and \$127 million for the same periods in 2019. Equities net DVA losses were \$9 million and gains of \$1 million for the three and nine months ended September 30, 2020 compared to gains of \$3 million and losses of \$9 million for the same periods in 2019.

### Three-Month Comparison

FICC revenue increased \$52 million due to stronger performance in mortgages and foreign exchange products. Equities revenue increased \$65 million driven by increased client activity in Asia.

### Nine-Month Comparison

FICC revenue increased \$1.4 billion driven by increased client activity and improved market-making conditions across macro products, partially offset by weaker performances in credit-sensitive businesses. Equities revenue increased \$617 million driven by increased client activity and a strong trading performance in a more volatile market environment.

## All Other

(Dollars in millions)	Three Months Ended September 30			Nine Months Ended September 30		
	2020	2019	% Change	2020	2019	% Change
Net interest income	\$ (20)	\$ 62	(132)%	\$ 3	\$ 135	(98)%
Noninterest income (loss)	(915)	(810)	13	(2,182)	(2,019)	8
Total revenue, net of interest expense	(935)	(748)	25	(2,179)	(1,884)	16
Provision for credit losses	(18)	(295)	(94)	75	(590)	(113)
Noninterest expense	560	2,460	(77)	1,114	3,375	(67)
Loss before income taxes	(1,477)	(2,913)	(49)	(3,368)	(4,669)	(28)
Income tax benefit	(1,774)	(1,320)	34	(3,387)	(3,050)	11
Net income (loss)	\$ 297	\$ (1,593)	(119)	\$ 19	\$ (1,619)	(101)

### Balance Sheet

Average	Three Months Ended September 30			Nine Months Ended September 30		
	2020	2019	% Change	2020	2019	% Change
Total loans and leases	\$ 24,243	\$ 41,789	(42)%	\$ 30,218	\$ 44,530	(32)%
Total assets <sup>(1)</sup>	230,906	212,440	9	227,430	205,335	11
Total deposits	14,881	20,641	(28)	19,926	20,645	(3)

### Period end

	September 30		December 31	% Change
	2020	2019		
Total loans and leases	\$ 23,120	\$ 37,156	(38)%	
Total assets <sup>(1)</sup>	223,345	224,375	—	
Total deposits	12,839	23,089	(44)	

<sup>(1)</sup> In segments where the total of liabilities and equity exceeds assets, which are generally deposit-taking segments, we allocate assets from *All Other* to those segments to match liabilities (i.e., deposits) and allocated shareholders' equity. Average allocated assets were \$828.3 billion and \$714.2 billion for the three and nine months ended September 30, 2020 compared to \$536.8 billion and \$540.9 billion for the same periods in 2019, and period-end allocated assets were \$857.8 billion and \$565.4 billion at September 30, 2020 and December 31, 2019.

*All Other* consists of ALM activities, equity investments, non-core mortgage loans and servicing activities, liquidating businesses and certain expenses not otherwise allocated to a business segment. ALM activities encompass certain residential mortgages, debt securities, and interest rate and foreign currency risk management activities. Substantially all of the results of ALM activities are allocated to our business segments. For more information on our ALM activities, see *Note 17 – Business Segment Information* to the Consolidated Financial Statements. For more information about *All Other*, see Business Segment Operations in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

Residential mortgage loans that are held for ALM purposes, including interest rate or liquidity risk management, are classified as core and are presented on the balance sheet of *All Other*. During the nine months ended September 30, 2020, residential mortgage loans held for ALM activities decreased \$11.7 billion to \$10.0 billion due primarily to loan sales. Non-core residential mortgage and home equity loans, which are principally runoff portfolios, are also held in *All Other*. During the nine months ended September 30, 2020, total non-core loans decreased \$2.4 billion to \$13.3 billion due primarily to payoffs and paydowns, as well as Federal Housing Administration (FHA) loan conveyances and sales, partially offset by repurchases. For more information on the composition of the core and non-core portfolios, see Consumer Portfolio Credit Risk Management on page 30.

### Three-Month Comparison

Results for *All Other* improved \$1.9 billion to net income of \$297 million from a net loss of \$1.6 billion in the prior-year period primarily due to a \$2.1 billion pretax impairment charge related to the notice of termination of the merchant services joint venture in the prior year, partially offset by lower revenue and a decrease in the benefit in provision for credit losses.

Revenue decreased \$187 million due to lower noninterest income driven by the results of certain treasury activities and lower net interest income.

Noninterest expense decreased \$1.9 billion to \$560 million due to the \$2.1 billion pretax impairment charge in the prior-year period, partially offset by higher litigation expense.

The benefit in the provision for credit losses decreased \$277 million to \$18 million primarily due to recoveries from sales of previously charged-off non-core consumer real estate loans in the prior-year period.

The income tax benefit increased \$454 million reflecting the impact of the U.K. tax law change, partially offset by the impact of decreased pretax losses and lower discrete tax benefits. For more information on the U.K. tax law change, see Financial Highlights on page 7. Both periods included income tax benefit adjustments to eliminate the FTE treatment of certain tax credits recorded in *Global Banking*.

### Nine-Month Comparison

Results for *All Other* improved \$1.6 billion to net income of \$19 million from a net loss of \$1.6 billion in the prior-year period primarily due to the same factors as described in the three-month discussion.

Revenue decreased \$295 million primarily due to the results of certain treasury activities, valuation adjustments on securities and derivatives and extinguishment losses on certain structured liabilities, partially offset by a gain on sales of mortgage loans.

The provision for credit losses increased \$665 million to \$75 million due to the same factor as described in the three-month discussion as well as the weaker economic outlook related to COVID-19.

Noninterest expense decreased \$2.3 billion to \$1.1 billion due to the same factors as described in the three-month discussion.

The income tax benefit increased \$337 million due to the same factors as described in the three-month discussion. Both periods included income tax benefit adjustments to eliminate the FTE treatment of certain tax credits recorded in *Global Banking*.



## Off-Balance Sheet Arrangements and Contractual Obligations

We have contractual obligations to make future payments on debt and lease agreements. Additionally, in the normal course of business, we enter into contractual arrangements whereby we commit to future purchases of products or services from unaffiliated parties. For more information on obligations and commitments, see *Note 10 – Commitments and Contingencies* to the Consolidated Financial Statements herein, as well as Off-Balance Sheet Arrangements and Contractual Obligations in the MD&A of the Corporation's 2019 Annual Report on Form 10-K, and *Note 12 – Long-term Debt* and *Note 13 – Commitments and Contingencies* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

## Representations and Warranties Obligations

For more information on representations and warranties obligations in connection with the sale of mortgage loans, see *Note 13 – Commitments and Contingencies* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

## Managing Risk

Risk is inherent in all our business activities. The seven key types of risk faced by the Corporation are strategic, credit, market, liquidity, compliance, operational and reputational. Sound risk management enables us to serve our customers and deliver for our shareholders. If not managed well, risks can result in financial loss, regulatory sanctions and penalties, and damage to our reputation, each of which may adversely impact our ability to execute our business strategies. We take a comprehensive approach to risk management with a defined Risk Framework and an articulated Risk Appetite Statement which are approved annually by the Enterprise Risk Committee and the Board.

Our Risk Framework serves as the foundation for the consistent and effective management of risks facing the Corporation. The Risk Framework sets forth clear roles, responsibilities and accountability for the management of risk and provides a blueprint for how the Board, through delegation of authority to committees and executive officers, establishes risk appetite and associated limits for our activities.

Our Risk Appetite Statement is intended to ensure that the Corporation maintains an acceptable risk profile by providing a common framework and a comparable set of measures for senior management and the Board to clearly indicate the level of risk the Corporation is willing to accept. Risk appetite is set at least annually and is aligned with the Corporation's strategic, capital and financial operating plans. Our line-of-business strategies and risk appetite are also similarly aligned.

For more information about the Corporation's risks related to the COVID-19 pandemic, see Part II, Item 1A. Risk Factors on page 105. These COVID-19 related risks are being managed within our Risk Framework and supporting risk management programs.

For more information on our Risk Framework, our risk management activities and the key types of risk faced by the Corporation, see the Managing Risk through Reputational Risk sections in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

## Capital Management

The Corporation manages its capital position so that its capital is more than adequate to support its business activities and aligns with risk, risk appetite and strategic planning. For more information on capital management, including related regulatory requirements, see Capital Management in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

## CCAR and Capital Planning

The Federal Reserve requires BHCs to submit a capital plan and planned capital actions on an annual basis, consistent with the rules governing the CCAR capital plan. In June 2020, the Federal Reserve notified BHCs of their 2020 CCAR supervisory stress test results, which included a preliminary stress capital buffer (SCB) that was finalized in August 2020. Based on our results, we are subject to a 2.5 percent SCB for the period beginning October 1, 2020 and ending on September 30, 2021. Our Common equity tier 1 (CET1) capital ratio under the Standardized approach must remain above 9.5 percent during this period (the sum of our CET1 capital ratio minimum of 4.5 percent, global systemically important bank (G-SIB) surcharge of 2.5 percent and our SCB of 2.5 percent) in order to avoid restrictions on capital distributions and discretionary bonus payments.

Due to economic uncertainty resulting from the COVID-19 pandemic, the Federal Reserve required all large banks to suspend share repurchase programs in the third quarter of 2020, except for repurchases to offset shares awarded under equity-based compensation plans, and to limit dividends to existing rates that do not exceed the average of the last four quarters' net income. In September 2020, the Federal Reserve announced that these measures would remain in place for the fourth quarter of 2020. Large banks will also be required to update and resubmit their capital plans in November 2020 based on the Federal Reserve's updated supervisory stress test scenarios. The Federal Reserve announced that it will publish the results of the additional supervisory stress tests by December 31, 2020.

As previously disclosed, the Federal Reserve's directives regarding share repurchases aligned with our decision to voluntarily suspend our general common stock repurchase program during the first half of 2020. The suspension of our repurchases did not include repurchases to offset shares awarded under our equity-based compensation plans, for which we repurchased \$114 million of common stock during the third quarter of 2020 pursuant to the Board's repurchase authorization.

We intend to maintain the quarterly common stock dividend at the current rate of \$0.18 per share until further notice, subject to approval by the Board. We will also continue our current suspension of common stock repurchases in the fourth quarter of 2020, except for repurchases to offset shares awarded under our equity-based compensation plans, which have previously been authorized by the Board.

Our general common stock repurchase program is subject to the Board's approval, and at such time that we reinstate our stock repurchase program, our stock repurchases will be subject to various factors, including the Corporation's capital position, liquidity, financial performance and alternative uses of capital, stock trading price and general market conditions, and may be suspended at any time. Such repurchases may be effected through open market purchases or privately negotiated transactions, including repurchase plans that satisfy the conditions of Rule 10b5-1 of the Securities Exchange Act of 1934, as amended (Exchange Act).

## Regulatory Capital

As a financial services holding company, we are subject to regulatory capital rules, including Basel 3, issued by U.S. banking regulators. The Corporation's depository institution subsidiaries are also subject to the Prompt Corrective Action (PCA) framework. The Corporation and its primary affiliated banking entity, BANA, are Advanced approaches institutions under Basel 3 and are required to report regulatory risk-based capital ratios and risk-weighted assets (RWA) under both the Standardized and Advanced approaches. The approach that yields the lower ratio is used to assess capital adequacy including under the PCA framework. As of September 30, 2020, the CET1, Tier 1 capital and Total capital ratios for the Corporation were lower under the Standardized approach.

### Minimum Capital Requirements

In order to avoid restrictions on capital distributions and discretionary bonus payments, the Corporation must meet risk-based capital ratio requirements that include a capital conservation buffer greater than 2.5 percent, plus any

applicable countercyclical capital buffer and a G-SIB surcharge. On October 1, 2020, the capital conservation buffer was replaced by the SCB for the Corporation's Standardized approach ratio requirements. The buffers and surcharge must be comprised solely of CET1 capital.

The Corporation is also required to maintain a minimum supplementary leverage ratio (SLR) of 3.0 percent plus a leverage buffer of 2.0 percent in order to avoid certain restrictions on capital distributions and discretionary bonus payments. Our insured depository institution subsidiaries are required to maintain a minimum 6.0 percent SLR to be considered well capitalized under the PCA framework.

### Capital Composition and Ratios

Table 8 presents Bank of America Corporation's capital ratios and related information in accordance with Basel 3 Standardized and Advanced approaches as measured at September 30, 2020 and December 31, 2019. For the periods presented herein, the Corporation met the definition of well capitalized under current regulatory requirements.

**Table 8** Bank of America Corporation Regulatory Capital under Basel 3

	Standardized Approach <sup>(1,2)</sup>	Advanced Approaches <sup>(1)</sup>	Regulatory Minimum <sup>(3)</sup>
	September 30, 2020		
(Dollars in millions, except as noted)			
<b>Risk-based capital metrics:</b>			
Common equity tier 1 capital	\$ 173,213	\$ 173,213	
Tier 1 capital	196,637	196,637	
Total capital <sup>(4)</sup>	235,446	224,541	
Risk-weighted assets (in billions)	1,460	1,364	
Common equity tier 1 capital ratio	11.9 %	12.7 %	9.5 %
Tier 1 capital ratio	13.5	14.4	11.0
Total capital ratio	16.1	16.5	13.0
<b>Leverage-based metrics:</b>			
Adjusted quarterly average assets (in billions) <sup>(5)</sup>	\$ 2,667	\$ 2,667	
Tier 1 leverage ratio	7.4 %	7.4 %	4.0
Supplementary leverage exposure (in billions) <sup>(6)</sup>		\$ 2,867	
Supplementary leverage ratio		6.9 %	5.0
	December 31, 2019		
<b>Risk-based capital metrics:</b>			
Common equity tier 1 capital	\$ 166,760	\$ 166,760	
Tier 1 capital	188,492	188,492	
Total capital <sup>(4)</sup>	221,230	213,098	
Risk-weighted assets (in billions)	1,493	1,447	
Common equity tier 1 capital ratio	11.2 %	11.5 %	9.5 %
Tier 1 capital ratio	12.6	13.0	11.0
Total capital ratio	14.8	14.7	13.0
<b>Leverage-based metrics:</b>			
Adjusted quarterly average assets (in billions) <sup>(5)</sup>	\$ 2,374	\$ 2,374	
Tier 1 leverage ratio	7.9 %	7.9 %	4.0
Supplementary leverage exposure (in billions)		\$ 2,946	
Supplementary leverage ratio		6.4 %	5.0

<sup>(1)</sup> As of September 30, 2020, capital ratios are calculated using the regulatory capital rule that allows a five-year transition period related to the adoption of CECL.

<sup>(2)</sup> Derivative exposure amounts are calculated using the standardized approach for measuring counterparty credit risk at September 30, 2020 and the current exposure method at December 31, 2019.

<sup>(3)</sup> The capital conservation buffer and G-SIB surcharge were 2.5 percent at both September 30, 2020 and December 31, 2019. The countercyclical capital buffer for both periods was zero. The SLR minimum includes a leverage buffer of 2.0 percent.

<sup>(4)</sup> Total capital under the Advanced approaches differs from the Standardized approach due to differences in the amount permitted in Tier 2 capital related to the qualifying allowance for credit losses.

<sup>(5)</sup> Reflects total average assets adjusted for certain Tier 1 capital deductions.

<sup>(6)</sup> Supplementary leverage exposure at September 30, 2020 reflects the temporary exclusion of U.S. Treasury Securities and deposits at Federal Reserve Banks.

At September 30, 2020, CET1 capital was \$173.2 billion, an increase of \$6.5 billion from December 31, 2019, driven by earnings and net unrealized gains on available-for-sale (AFS) debt securities included in accumulated other comprehensive income (OCI), partially offset by common stock repurchases and

dividends. Total capital under the Standardized approach increased \$14.2 billion primarily driven by the same factors as CET1 capital, an increase in the adjusted allowance for credit losses included in Tier 2 capital and the issuance of preferred stock. RWA under the Standardized approach, which yielded the

lower CET1 capital ratio at September 30, 2020, decreased \$33.5 billion during the nine months ended September 30, 2020 to \$1,460 billion primarily due to lower exposures in *Global Banking* and *Consumer Banking*, partially offset by

increases in counterparty credit risk and market risk RWA. Table 9 shows the capital composition at September 30, 2020 and December 31, 2019.

**Table 9 Capital Composition under Basel 3**

	September 30 2020	December 31 2019
(Dollars in millions)		
Total common shareholders' equity	\$ 245,423	\$ 241,409
CECL transitional amount <sup>(1)</sup>	4,411	—
Goodwill, net of related deferred tax liabilities	(68,569)	(68,570)
Deferred tax assets arising from net operating loss and tax credit carryforwards	(5,853)	(5,193)
Intangibles, other than mortgage servicing rights and goodwill, net of related deferred tax liabilities	(1,656)	(1,328)
Defined benefit pension plan net assets	(1,056)	(1,003)
Cumulative unrealized net (gain) loss related to changes in fair value of financial liabilities attributable to own creditworthiness, net-of-tax	1,245	1,278
Other	(732)	167
<b>Common equity tier 1 capital</b>	<b>173,213</b>	<b>166,760</b>
Qualifying preferred stock, net of issuance cost	23,426	22,329
Other	(2)	(597)
<b>Tier 1 capital</b>	<b>196,637</b>	<b>188,492</b>
Tier 2 capital instruments	22,571	22,538
Qualifying allowance for credit losses <sup>(2)</sup>	16,243	10,229
Other	(5)	(29)
<b>Total capital under the Standardized approach</b>	<b>235,446</b>	<b>221,230</b>
Adjustment in qualifying allowance for credit losses under the Advanced approaches <sup>(2)</sup>	(10,905)	(8,132)
<b>Total capital under the Advanced approaches</b>	<b>\$ 224,541</b>	<b>\$ 213,098</b>

<sup>(1)</sup> The CECL transitional amount includes the impact of the Corporation's adoption of the new CECL accounting standard on January 1, 2020 plus 25 percent of the increase in the adjusted allowance for credit losses from January 1, 2020 through September 30, 2020.

<sup>(2)</sup> The balance at September 30, 2020 includes the impact of transition provisions related to the new CECL accounting standard.

Table 10 shows the components of RWA as measured under Basel 3 at September 30, 2020 and December 31, 2019.

**Table 10 Risk-weighted Assets under Basel 3**

	Standardized Approach <sup>(1)</sup>	Advanced Approaches	Standardized Approach <sup>(1)</sup>	Advanced Approaches
	September 30, 2020		December 31, 2019	
(Dollars in billions)				
Credit risk	\$ 1,396	\$ 884	\$ 1,437	\$ 858
Market risk	64	63	56	55
Operational risk <sup>(2)</sup>	n/a	372	n/a	500
Risks related to credit valuation adjustments	n/a	45	n/a	34
<b>Total risk-weighted assets</b>	<b>\$ 1,460</b>	<b>\$ 1,364</b>	<b>\$ 1,493</b>	<b>\$ 1,447</b>

<sup>(1)</sup> Derivative exposure amounts are calculated using the standardized approach for measuring counterparty credit risk at September 30, 2020 and the current exposure method at December 31, 2019.

<sup>(2)</sup> September 30, 2020 includes the effects of an update made to our operational risk RWA model during the third quarter of 2020.

n/a = not applicable

## Bank of America, N.A. Regulatory Capital

Table 11 presents regulatory capital information for BANA in accordance with Basel 3 Standardized and Advanced approaches as measured at September 30, 2020 and December 31, 2019. BANA met the definition of well capitalized under the PCA framework for both periods.

**Table 11 Bank of America, N.A. Regulatory Capital under Basel 3**

	Standardized Approach <sup>(1, 2)</sup>	Advanced Approaches <sup>(1)</sup>	Regulatory Minimum <sup>(3)</sup>
<b>September 30, 2020</b>			
(Dollars in millions, except as noted)			
<b>Risk-based capital metrics:</b>			
Common equity tier 1 capital	\$ 160,013	\$ 160,013	
Tier 1 capital	160,013	160,013	
Total capital <sup>(4)</sup>	176,754	166,426	
Risk-weighted assets (in billions)	1,212	1,019	
Common equity tier 1 capital ratio	13.2 %	15.7 %	7.0 %
Tier 1 capital ratio	13.2	15.7	8.5
Total capital ratio	14.6	16.3	10.5
<b>Leverage-based metrics:</b>			
Adjusted quarterly average assets (in billions) <sup>(5)</sup>	\$ 2,091	\$ 2,091	
Tier 1 leverage ratio	7.7 %	7.7 %	5.0
Supplementary leverage exposure (in billions)		\$ 2,465	
Supplementary leverage ratio		6.5 %	6.0
<b>December 31, 2019</b>			
<b>Risk-based capital metrics:</b>			
Common equity tier 1 capital	\$ 154,626	\$ 154,626	
Tier 1 capital	154,626	154,626	
Total capital <sup>(4)</sup>	166,567	158,665	
Risk-weighted assets (in billions)	1,241	991	
Common equity tier 1 capital ratio	12.5 %	15.6 %	7.0 %
Tier 1 capital ratio	12.5	15.6	8.5
Total capital ratio	13.4	16.0	10.5
<b>Leverage-based metrics:</b>			
Adjusted quarterly average assets (in billions) <sup>(5)</sup>	\$ 1,780	\$ 1,780	
Tier 1 leverage ratio	8.7 %	8.7 %	5.0
Supplementary leverage exposure (in billions)		\$ 2,177	
Supplementary leverage ratio		7.1 %	6.0

<sup>(1)</sup> As of September 30, 2020, capital ratios are calculated using the regulatory capital rule that allows a five-year transition period related to the adoption of CECL.

<sup>(2)</sup> Derivative exposure amounts are calculated using the standardized approach for measuring counterparty credit risk at September 30, 2020 and the current exposure method at December 31, 2019.

<sup>(3)</sup> Risk-based capital regulatory minimums at September 30, 2020 and December 31, 2019 are the minimum ratios under Basel 3 including a capital conservation buffer of 2.5 percent. The regulatory minimums for the leverage ratios as of both period ends are the percent required to be considered well capitalized under the PCA framework.

<sup>(4)</sup> Total capital under the Advanced approaches differs from the Standardized approach due to differences in the amount permitted in Tier 2 capital related to the qualifying allowance for credit losses.

<sup>(5)</sup> Reflects total average assets adjusted for certain Tier 1 capital deductions.

## Total Loss-Absorbing Capacity Requirements

Total loss-absorbing capacity (TLAC) consists of the Corporation's Tier 1 capital and eligible long-term debt issued directly by the Corporation. Eligible long-term debt for TLAC ratios is comprised of unsecured debt that has a remaining maturity of at least one year and satisfies additional requirements as prescribed in the TLAC final rule. As with the

risk-based capital ratios and SLR, the Corporation is required to maintain TLAC ratios in excess of minimum requirements plus applicable buffers to avoid restrictions on capital distributions and discretionary bonus payments. Table 12 presents the Corporation's TLAC and long-term debt ratios and related information as of September 30, 2020 and December 31, 2019.

**Table 12 Bank of America Corporation Total Loss-Absorbing Capacity and Long-Term Debt**

	TLAC <sup>(1)</sup>	Regulatory Minimum <sup>(2)</sup>	Long-term Debt	Regulatory Minimum <sup>(3)</sup>
	September 30, 2020			
(Dollars in millions)				
Total eligible balance	\$ 392,767		\$ 188,022	
Percentage of risk-weighted assets <sup>(4)</sup>	26.9 %	22.0 %	12.9 %	8.5 %
Percentage of supplementary leverage exposure <sup>(5, 6)</sup>	13.7	9.5	6.6	4.5
	December 31, 2019			
Total eligible balance	\$ 367,449		\$ 171,349	
Percentage of risk-weighted assets <sup>(4)</sup>	24.6 %	22.0 %	11.5 %	8.5 %
Percentage of supplementary leverage exposure <sup>(6)</sup>	12.5	9.5	5.8	4.5

<sup>(1)</sup> As of September 30, 2020, TLAC ratios are calculated using the regulatory capital rule that allows a five-year transition period related to the adoption of CECL.

<sup>(2)</sup> The TLAC RWA regulatory minimum consists of 18.0 percent plus a TLAC RWA buffer comprised of 2.5 percent plus the method 1 G-SIB surcharge of 1.5 percent. The countercyclical buffer is zero for both periods. The TLAC supplementary leverage exposure regulatory minimum consists of 7.5 percent plus a 2.0 percent TLAC leverage buffer. The TLAC RWA and leverage buffers must be comprised solely of CET1 capital and Tier 1 capital, respectively.

<sup>(3)</sup> The long-term debt RWA regulatory minimum is comprised of 6.0 percent plus an additional 2.5 percent requirement based on the Corporation's method 2 G-SIB surcharge. The long-term debt leverage exposure regulatory minimum is 4.5 percent.

<sup>(4)</sup> The approach that yields the higher RWA is used to calculate TLAC and long-term debt ratios, which was the Standardized approach as of September 30, 2020 and December 31, 2019.

<sup>(5)</sup> Supplementary leverage exposure at September 30, 2020 reflects the temporary exclusion of U.S. Treasury Securities and deposits at Federal Reserve Banks.

<sup>(6)</sup> Derivative exposure amounts are calculated using the standardized approach for measuring counterparty credit risk at September 30, 2020 and the current exposure method at December 31, 2019.

## Regulatory Developments

The following supplements the disclosure in Capital Management – Regulatory Developments in the MD&A of the Corporation's 2019 Annual Report on Form 10-K and in the Corporation's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020.

### Deduction of Unsecured Debt of G-SIBs

On October 20, 2020, the Federal Reserve, Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (U.S. Agencies) finalized a rule requiring Advanced approaches institutions to deduct from regulatory capital certain investments in TLAC-eligible long-term debt and other pari passu or subordinated debt instruments issued by G-SIBs above a specified threshold. The final rule is intended to limit the interconnectedness between G-SIBs and is complementary to existing regulatory capital requirements that generally require banks to deduct investments in the regulatory capital of financial institutions. The final rule is effective April 1, 2021. The impact to the Corporation is not expected to be significant.

## Regulatory Capital and Securities Regulation

The Corporation's principal U.S. broker-dealer subsidiaries are BofA Securities, Inc. (BofAS), Merrill Lynch Professional Clearing Corp. (MLPCC) and Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S). The Corporation's principal European broker-dealer subsidiaries are Merrill Lynch International (MLI) and BofA Securities Europe SA (BofASE).

The U.S. broker-dealer subsidiaries are subject to the net capital requirements of Rule 15c3-1 under the Exchange Act. BofAS computes its minimum capital requirements as an alternative net capital broker-dealer under Rule 15c3-1e, and MLPCC and MLPF&S compute their minimum capital requirements in accordance with the alternative standard under Rule 15c3-1. BofAS and MLPCC are also registered as futures commission merchants and are subject to Commodity Futures Trading Commission (CFTC) Regulation 1.17. The U.S. broker-dealer subsidiaries are also registered with the Financial Industry Regulatory Authority, Inc. (FINRA). Pursuant to FINRA Rule 4110, FINRA may impose higher net capital requirements than Rule 15c3-1 under the Exchange Act with respect to each of the broker-dealers.

BofAS provides institutional services, and in accordance with the alternative net capital requirements, is required to maintain tentative net capital in excess of \$1.0 billion and net capital in excess of the greater of \$500 million or a certain percentage of

its reserve requirement. BofAS must also notify the Securities and Exchange Commission (SEC) in the event its tentative net capital is less than \$5.0 billion. BofAS is also required to hold a certain percentage of its customers' and affiliates' risk-based margin in order to meet its CFTC minimum net capital requirement. At September 30, 2020, BofAS had tentative net capital of \$20.3 billion. BofAS also had regulatory net capital of \$17.9 billion, which exceeded the minimum requirement of \$3.0 billion.

MLPCC is a fully-guaranteed subsidiary of BofAS and provides clearing and settlement services as well as prime brokerage and arranged financing services for institutional clients. At September 30, 2020, MLPCC's regulatory net capital of \$7.2 billion exceeded the minimum requirement of \$1.2 billion.

MLPF&S provides retail services. At September 30, 2020, MLPF&S' regulatory net capital was \$3.4 billion, which exceeded the minimum requirement of \$147 million.

Our European broker-dealers are regulated by non-U.S. regulators. MLI, a U.K. investment firm, is regulated by the Prudential Regulation Authority and the Financial Conduct Authority and is subject to certain regulatory capital requirements. At September 30, 2020, MLI's capital resources were \$35.1 billion, which exceeded the minimum Pillar 1 requirement of \$13.8 billion. BofASE, a French investment firm, is regulated by the Autorité de Contrôle Prudentiel et de Résolution and the Autorité des Marchés Financiers, and is subject to certain regulatory capital requirements. At September 30, 2020, BofASE's capital resources were \$6.0 billion which exceeded the minimum Pillar 1 requirement of \$1.9 billion.

## Liquidity Risk

### Funding and Liquidity Risk Management

Our primary liquidity risk management objective is to meet expected or unexpected cash flow and collateral needs while continuing to support our businesses and customers under a range of economic conditions. To achieve that objective, we analyze and monitor our liquidity risk under expected and stressed conditions, maintain liquidity and access to diverse funding sources, including our stable deposit base, and seek to align liquidity-related incentives and risks. These liquidity risk management practices have allowed us to effectively manage the market stress that began in the first quarter of 2020 from the COVID-19 pandemic. For more information on the effects of

the pandemic, see Executive Summary - Recent Developments – COVID-19 Pandemic on page 3.

We define liquidity as readily available assets, limited to cash and high-quality, liquid, unencumbered securities that we can use to meet our contractual and contingent financial obligations as those obligations arise. We manage our liquidity position through line-of-business and ALM activities, as well as through our legal entity funding strategy, on both a forward and current (including intraday) basis under both expected and stressed conditions. We believe that a centralized approach to funding and liquidity management enhances our ability to monitor liquidity requirements, maximizes access to funding sources, minimizes borrowing costs and facilitates timely responses to liquidity events. For more information regarding global funding and liquidity risk management, as well as liquidity sources, liquidity arrangements, contingency planning and credit ratings discussed below, see Liquidity Risk in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

#### NB Holdings Corporation

We have intercompany arrangements with certain key subsidiaries under which we transferred certain assets of Bank of America Corporation, as the parent company, which is a separate and distinct legal entity from our banking and nonbank subsidiaries, and agreed to transfer certain additional parent company assets not needed to satisfy anticipated near term expenditures, to NB Holdings Corporation, a wholly-owned holding company subsidiary (NB Holdings). The parent company is expected to continue to have access to the same flow of dividends, interest and other amounts of cash necessary to service its debt, pay dividends and perform other obligations as it would have had if it had not entered into these arrangements and transferred any assets. These arrangements support our preferred single point of entry resolution strategy, under which only the parent company would be resolved under the U.S. Bankruptcy Code.

#### Global Liquidity Sources and Other Unencumbered Assets

Table 13 presents average Global Liquidity Sources (GLS) for the three months ended September 30, 2020 and December 31, 2019.

**Table 13 Average Global Liquidity Sources**

	Three Months Ended	
	September 30 2020	December 31 2019
(Dollars in billions)		
Bank entities	\$ 690	\$ 454
Nonbank and other entities <sup>(1)</sup>	169	122
<b>Total Average Global Liquidity Sources</b>	<b>\$ 859</b>	<b>\$ 576</b>

<sup>(1)</sup> Nonbank includes Parent, NB Holdings and other regulated entities.

We maintain liquidity available to the Corporation, including the parent company and selected subsidiaries, in the form of cash and high-quality, liquid, unencumbered securities. Typically, parent company and NB Holdings liquidity is in the form of cash deposited with BANA.

Our bank subsidiaries' liquidity is primarily driven by deposit and lending activity, as well as securities valuation and net debt activity. Liquidity at bank subsidiaries excludes the cash deposited by the parent company and NB Holdings. Our bank subsidiaries can also generate incremental liquidity by pledging a range of unencumbered loans and securities to certain Federal Home Loan Banks (FHLBs) and the Federal Reserve

Discount Window. The cash we could have obtained by borrowing against this pool of specifically-identified eligible assets was \$320 billion and \$372 billion at September 30, 2020 and December 31, 2019. We have established operational procedures to enable us to borrow against these assets, including regularly monitoring our total pool of eligible loans and securities collateral. Eligibility is defined in guidelines from the FHLBs and the Federal Reserve and is subject to change at their discretion. Due to regulatory restrictions, liquidity generated by the bank subsidiaries can generally be used only to fund obligations within the bank subsidiaries, and transfers to the parent company or nonbank subsidiaries may be subject to prior regulatory approval.

Liquidity held in other regulated entities, comprised primarily of broker-dealer subsidiaries, is primarily available to meet the obligations of that entity, and transfers to the parent company or to any other subsidiary may be subject to prior regulatory approval due to regulatory restrictions and minimum requirements. Our other regulated entities also hold unencumbered investment-grade securities and equities that we believe could be used to generate additional liquidity.

Table 14 presents the composition of average GLS for the three months ended September 30, 2020 and December 31, 2019.

**Table 14 Average Global Liquidity Sources Composition**

	Three Months Ended	
	September 30 2020	December 31 2019
(Dollars in billions)		
Cash on deposit	\$ 244	\$ 103
U.S. Treasury securities	166	98
U.S. agency securities, mortgage-backed securities, and other investment-grade securities	426	358
Non-U.S. government securities	23	17
<b>Total Average Global Liquidity Sources</b>	<b>\$ 859</b>	<b>\$ 576</b>

Our GLS are substantially the same in composition to what qualifies as High Quality Liquid Assets (HQLA) under the final U.S. Liquidity Coverage Ratio (LCR) rules. However, HQLA for purposes of calculating LCR is not reported at market value, but at a lower value that incorporates regulatory deductions and the exclusion of excess liquidity held at certain subsidiaries. The LCR is calculated as the amount of a financial institution's unencumbered HQLA relative to the estimated net cash outflows the institution could encounter over a 30-day period of significant liquidity stress, expressed as a percentage. Our average consolidated HQLA, on a net basis, was \$562 billion and \$464 billion for the three months ended September 30, 2020 and December 31, 2019. For the same periods, the average consolidated LCR was 122 percent and 116 percent. Our LCR fluctuates due to normal business flows from customer activity.

#### Liquidity Stress Analysis

We utilize liquidity stress analysis to assist us in determining the appropriate amounts of liquidity to maintain at the parent company and our subsidiaries to meet contractual and contingent cash outflows under a range of scenarios. For more information on our liquidity stress analysis, see Liquidity Risk – Liquidity Stress Analysis in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

### Net Stable Funding Ratio Final Rule

On October 20, 2020, the U.S. Agencies finalized the Net Stable Funding Ratio, a rule requiring large banks to maintain a minimum level of stable funding over a one-year period. The final rule is intended to support the ability of banks to lend to households and businesses in both normal and adverse economic conditions and is complementary to the LCR rule, which focuses on short-term liquidity risks. The final rule is effective July 1, 2021. The impact to the Corporation is not expected to be significant.

### Diversified Funding Sources

We fund our assets primarily with a mix of deposits, and secured and unsecured liabilities through a centralized, globally coordinated funding approach diversified across products, programs, markets, currencies and investor groups. We fund a substantial portion of our lending activities through our deposits, which were \$1.70 trillion and \$1.43 trillion at September 30, 2020 and December 31, 2019.

Our trading activities in other regulated entities are primarily funded on a secured basis through securities lending and repurchase agreements, and these amounts will vary based on customer activity and market conditions.

### Long-term Debt

During the nine months ended September 30, 2020, we issued \$40.7 billion of long-term debt consisting of \$32.9 billion of notes issued by Bank of America Corporation, substantially all of which was TLAC compliant, \$1.9 billion of notes issued by Bank of America, N.A. and \$5.9 billion of other debt.

During the nine months ended September 30, 2020, we had total long-term debt maturities and redemptions in the aggregate of \$36.4 billion consisting of \$16.4 billion for Bank of America Corporation, \$10.1 billion for Bank of America, N.A. and \$9.9 billion of other debt. Table 15 presents the carrying value of aggregate annual contractual maturities of long-term debt at September 30, 2020.

**Table 15 Long-term Debt by Maturity**

(Dollars in millions)	Remainder of 2020	2021	2022	2023	2024	Thereafter	Total
<b>Bank of America Corporation</b>							
Senior notes <sup>(1)</sup>	\$ 2,352	\$ 11,457	\$ 15,109	\$ 23,752	\$ 18,777	\$ 114,846	\$ 186,293
Senior structured notes	191	457	1,956	264	269	13,636	16,773
Subordinated notes	—	352	375	—	3,368	20,191	24,286
Junior subordinated notes	—	—	—	—	—	739	739
<b>Total Bank of America Corporation</b>	<b>2,543</b>	<b>12,266</b>	<b>17,440</b>	<b>24,016</b>	<b>22,414</b>	<b>149,412</b>	<b>228,091</b>
<b>Bank of America, N.A.</b>							
Senior notes	1,342	1,340	—	516	—	8	3,206
Subordinated notes	—	—	—	—	—	1,937	1,937
Advances from Federal Home Loan Banks	7	2	3	1	—	94	107
Securitizations and other Bank VIEs <sup>(2)</sup>	—	4,024	1,249	—	—	18	5,291
Other	5	95	—	152	1	110	363
<b>Total Bank of America, N.A.</b>	<b>1,354</b>	<b>5,461</b>	<b>1,252</b>	<b>669</b>	<b>1</b>	<b>2,167</b>	<b>10,904</b>
<b>Other debt</b>							
Structured liabilities	1,565	3,937	2,093	1,841	624	6,215	16,275
Nonbank VIEs <sup>(2)</sup>	—	1	—	—	—	452	453
<b>Total other debt</b>	<b>1,565</b>	<b>3,938</b>	<b>2,093</b>	<b>1,841</b>	<b>624</b>	<b>6,667</b>	<b>16,728</b>
<b>Total long-term debt</b>	<b>\$ 5,462</b>	<b>\$ 21,665</b>	<b>\$ 20,785</b>	<b>\$ 26,526</b>	<b>\$ 23,039</b>	<b>\$ 158,246</b>	<b>\$ 255,723</b>

<sup>(1)</sup> Total includes \$139.8 billion of outstanding notes that are both TLAC eligible and callable one year before their stated maturities, including \$2.8 billion during the remainder of 2020, and \$11.8 billion, \$15.2 billion, \$12.0 billion and \$11.6 billion during each year of 2021 through 2024, respectively, and \$86.4 billion thereafter. The call features provide the flexibility to retire long-term notes before their final year outstanding, when they are no longer eligible to count toward TLAC requirements, and replace them with new TLAC-eligible debt, should we choose to do so.

<sup>(2)</sup> Represents liabilities of consolidated VIEs included in total long-term debt on the Consolidated Balance Sheet.

Total long-term debt increased \$14.9 billion during the nine months ended September 30, 2020 primarily due to debt issuances and valuation adjustments, partially offset by maturities and redemptions. We may, from time to time, purchase outstanding debt instruments in various transactions, depending on market conditions, liquidity and other factors. Our other regulated entities may also make markets in our debt instruments to provide liquidity for investors.

We use derivative transactions to manage the duration, interest rate and currency risks of our borrowings, considering the characteristics of the assets they are funding. For more information on our ALM activities, see Interest Rate Risk Management for the Banking Book on page 48.

We may issue unsecured debt in the form of structured notes for client purposes, certain of which qualify as TLAC-eligible debt. During the nine months ended September 30, 2020, we issued \$6.1 billion of structured notes, which are unsecured debt obligations that pay investors returns linked to other debt or equity securities, indices, currencies or commodities. We typically hedge the returns we are obligated to

pay on these liabilities with derivatives and/or investments in the underlying instruments, so that from a funding perspective, the cost is similar to our other unsecured long-term debt. We could be required to settle certain structured note obligations for cash or other securities prior to maturity under certain circumstances, which we consider for liquidity planning purposes. We believe, however, that a portion of such borrowings will remain outstanding beyond the earliest put or redemption date.

Substantially all of our senior and subordinated debt obligations contain no provisions that could trigger a requirement for an early repayment, require additional collateral support, result in changes to terms, accelerate maturity or create additional financial obligations upon an adverse change in our credit ratings, financial ratios, earnings, cash flows or stock price. For more information on long-term debt funding, including issuances and maturities and redemptions, see *Note 12 – Long-term Debt* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.



## Credit Ratings

Credit ratings and outlooks are opinions expressed by rating agencies on our creditworthiness and that of our obligations or securities, including long-term debt, short-term borrowings, preferred stock and other securities, including asset securitizations. Table 16 presents the Corporation's current long-term/short-term senior debt ratings and outlooks expressed by the rating agencies.

The ratings and outlooks from Fitch Ratings for the Corporation and its subsidiaries have not changed from those disclosed in the Corporation's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020. The ratings and outlooks

from Moody's Investors Service (Moody's) and Standard & Poor's Global Ratings for the Corporation and its subsidiaries did not change from those disclosed in the Corporation's 2019 Annual Report on Form 10-K.

For more information on additional collateral and termination payments that could be required in connection with certain over-the-counter derivative contracts and other trading agreements in the event of a credit rating downgrade, see *Note 3 – Derivatives* to the Consolidated Financial Statements herein and Item 1A. Risk Factors of the Corporation's 2019 Annual Report on Form 10-K.

**Table 16 Senior Debt Ratings**

	Moody's Investors Service			Standard & Poor's Global Ratings			Fitch Ratings		
	Long-term	Short-term	Outlook	Long-term	Short-term	Outlook	Long-term	Short-term	Outlook
Bank of America Corporation	A2	P-1	Stable	A-	A-2	Stable	A+	F1	Stable
Bank of America, N.A.	Aa2	P-1	Stable	A+	A-1	Stable	AA-	F1+	Stable
Bank of America Merrill Lynch International Designated Activity Company	NR	NR	NR	A+	A-1	Stable	AA-	F1+	Stable
Merrill Lynch, Pierce, Fenner & Smith Incorporated	NR	NR	NR	A+	A-1	Stable	AA-	F1+	Stable
BoFA Securities, Inc.	NR	NR	NR	A+	A-1	Stable	AA-	F1+	Stable
Merrill Lynch International	NR	NR	NR	A+	A-1	Stable	AA-	F1+	Stable
BoFA Securities Europe SA	NR	NR	NR	A+	A-1	Stable	AA-	F1+	Stable

NR = not rated

## Credit Risk Management

For information on our credit risk management activities, see Consumer Portfolio Credit Risk Management below, Commercial Portfolio Credit Risk Management on page 37, Non-U.S. Portfolio on page 43, Allowance for Credit Losses on page 44, and *Note 5 – Outstanding Loans and Leases and Allowance for Credit Losses* to the Consolidated Financial Statements.

During the nine months ended September 30, 2020, the COVID-19 pandemic negatively impacted economic activity in the U.S. and around the world. However, there were also positive signs during this period as parts of the economy began to reopen, and unemployment dropped from double-digit highs in the second quarter of 2020. To provide relief to individuals and businesses in the U.S., the President signed into law four economic stimulus packages in March and April 2020, including the CARES Act, and also signed an executive order in August 2020 to establish the Lost Wage Assistance Program. In addition, U.S. bank regulatory agencies also issued interagency guidance to financial institutions that are working with borrowers affected by COVID-19.

Consumer charge-offs remained low during the nine months ended September 30, 2020 due to payment deferrals and government stimulus benefits. However, we experienced increases in nonperforming loans and commercial reservable criticized utilized exposures as a result of weaker economic conditions arising from COVID-19, particularly in certain sectors of the economy that have been more significantly impacted during the pandemic (e.g., travel and entertainment).

To support our customers, we implemented various loan modification programs and other forms of support beginning in March 2020, including offering loan payment deferrals, refunding certain fees, and pausing foreclosure sales, evictions and repossessions. During the three months ended September 30, 2020, we experienced a decline in the need for customer assistance as the number of customer accounts and balances on deferral decreased significantly. For information on the accounting for loan modifications related to the COVID-19

pandemic, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

## Consumer Portfolio Credit Risk Management

Credit risk management for the consumer portfolio begins with initial underwriting and continues throughout a borrower's credit cycle. Statistical techniques in conjunction with experiential judgment are used in all aspects of portfolio management including underwriting, product pricing, risk appetite, setting credit limits, and establishing operating processes and metrics to quantify and balance risks and returns. Statistical models are built using detailed behavioral information from external sources such as credit bureaus and/or internal historical experience and are a component of our consumer credit risk management process. These models are used in part to assist in making both new and ongoing credit decisions, as well as portfolio management strategies, including authorizations and line management, collection practices and strategies, and determination of the allowance for loan and lease losses and allocated capital for credit risk.

## Consumer Credit Portfolio

While COVID-19 is severely impacting economic activity, and is contributing to increasing delinquencies and nonperforming loans within certain consumer portfolios, it did not have a significant impact on consumer portfolio charge-offs during the three and nine months ended September 30, 2020 due to payment deferrals and government stimulus benefits. However, COVID-19 could lead to adverse impacts to credit quality metrics in future periods if negative economic conditions continue or worsen. Net charge-offs decreased \$58 million to \$564 million for the three months ended September 30, 2020 due to lower credit card losses and remained relatively flat at \$2.2 billion for the nine months ended September 30, 2020.

The consumer allowance for loan and lease losses increased \$6.1 billion during the nine months ended September 30, 2020 to \$10.7 billion due to the adoption of the new CECL accounting standard and deterioration in the economic outlook resulting



from the impact of COVID-19. For more information, see Allowance for Credit Losses on page 44.

For more information on our accounting policies regarding delinquencies, nonperforming status, charge-offs and TDRs for the consumer portfolio, see *Note 1 – Summary of Significant Accounting Principles* and *Note 5 – Outstanding Loans and Leases* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K. For

information on our interest accrual policies and delinquency status for loan modifications related to the COVID-19 pandemic, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

Table 17 presents our outstanding consumer loans and leases, consumer nonperforming loans and accruing consumer loans past due 90 days or more.

**Table 17 Consumer Credit Quality**

	Outstandings		Nonperforming		Accruing Past Due 90 Days or More	
	September 30 2020	December 31 2019	September 30 2020	December 31 2019	September 30 2020	December 31 2019
(Dollars in millions)						
Residential mortgage <sup>(1)</sup>	\$ 232,718	\$ 236,169	\$ 1,675	\$ 1,470	\$ 837	\$ 1,088
Home equity	36,530	40,208	640	536	—	—
Credit card	79,834	97,608	n/a	n/a	546	1,042
Direct/Indirect consumer <sup>(2)</sup>	89,914	90,998	42	47	27	33
Other consumer	140	192	—	—	—	—
<b>Consumer loans excluding loans accounted for under the fair value option</b>	<b>\$ 439,136</b>	<b>\$ 465,175</b>	<b>\$ 2,357</b>	<b>\$ 2,053</b>	<b>\$ 1,410</b>	<b>\$ 2,163</b>
Loans accounted for under the fair value option <sup>(3)</sup>	657	594				
<b>Total consumer loans and leases</b>	<b>\$ 439,793</b>	<b>\$ 465,769</b>				
Percentage of outstanding consumer loans and leases <sup>(4)</sup>			0.54 %	0.44 %	0.32 %	0.47 %
Percentage of outstanding consumer loans and leases, excluding fully-insured loan portfolios <sup>(4)</sup>			0.55	0.46	0.13	0.24

<sup>(1)</sup> Residential mortgage loans accruing past due 90 days or more are fully-insured loans. At September 30, 2020 and December 31, 2019, residential mortgage includes \$561 million and \$740 million of loans on which interest had been curtailed by the FHA, and therefore were no longer accruing interest, although principal was still insured, and \$276 million and \$348 million of loans on which interest was still accruing.

<sup>(2)</sup> Outstandings primarily include auto and specialty lending loans and leases of \$47.1 billion and \$50.4 billion, U.S. securities-based lending loans of \$39.0 billion and \$36.7 billion and non-U.S. consumer loans of \$2.9 billion and \$2.8 billion at September 30, 2020 and December 31, 2019.

<sup>(3)</sup> Consumer loans accounted for under the fair value option include residential mortgage loans of \$314 million and \$257 million and home equity loans of \$343 million and \$337 million at September 30, 2020 and December 31, 2019. For more information on the fair value option, see *Note 15 – Fair Value Option* to the Consolidated Financial Statements.

<sup>(4)</sup> Excludes consumer loans accounted for under the fair value option. At September 30, 2020 and December 31, 2019, \$9 million and \$6 million of loans accounted for under the fair value option were past due 90 days or more and not accruing interest. n/a = not applicable

Table 18 presents net charge-offs and related ratios for consumer loans and leases.

**Table 18 Consumer Net Charge-offs and Related Ratios**

	Net Charge-offs				Net Charge-off Ratios <sup>(1)</sup>			
	Three Months Ended September 30		Nine Months Ended September 30		Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019	2020	2019	2020	2019
(Dollars in millions)								
Residential mortgage	\$ (6)	\$ (38)	\$ (27)	\$ (51)	(0.01)%	(0.07)%	(0.02)%	(0.03)%
Home equity	(20)	(202)	(45)	(346)	(0.21)	(1.85)	(0.16)	(1.02)
Credit card	509	717	1,944	2,224	2.49	3.01	2.97	3.15
Direct/Indirect consumer	18	76	84	170	0.08	0.33	0.13	0.25
Other consumer	63	69	214	151	n/m	n/m	n/m	n/m
<b>Total</b>	<b>\$ 564</b>	<b>\$ 622</b>	<b>\$ 2,170</b>	<b>\$ 2,148</b>	<b>0.50</b>	<b>0.55</b>	<b>0.64</b>	<b>0.64</b>

<sup>(1)</sup> Net charge-off ratios are calculated as annualized net charge-offs divided by average outstanding loans and leases excluding loans accounted for under the fair value option.

n/m = not meaningful

Table 19 presents outstandings, nonperforming balances, net charge-offs, allowance for credit losses and provision for credit losses for the core and non-core portfolios within the consumer real estate portfolio. We categorize consumer real estate loans as core and non-core based on loan and customer characteristics such as origination date, product type, LTV, Fair Isaac Corporation (FICO) score and delinquency status consistent with our current consumer and mortgage servicing strategy. Generally, loans that were originated after January 1, 2010, qualified under government-sponsored enterprise underwriting guidelines, or otherwise met our underwriting

guidelines in place in 2015 are characterized as core loans. All other loans are generally characterized as non-core loans and represent runoff portfolios. Core loans as reported in Table 19 include loans held in the *Consumer Banking* and *GWIM* segments, as well as loans held for ALM activities in *All Other*.

As shown in Table 19, outstanding core consumer real estate loans decreased \$4.8 billion during the nine months ended September 30, 2020 driven by a decrease of \$1.9 billion in residential mortgage and a \$2.9 billion decrease in home equity.

**Table 19 Consumer Real Estate Portfolio <sup>(1)</sup>**

	Outstandings		Nonperforming		Net Charge-offs			
	September 30	December 31	September 30	December 31	Three Months Ended		Nine Months Ended	
(Dollars in millions)	2020	2019	2020	2019	2020	2019	2020	2019
Core portfolio								
Residential mortgage	\$ 223,895	\$ 225,770	\$ 1,057	\$ 883	\$ (3)	\$ (6)	\$ (23)	\$ (2)
Home equity	32,338	35,226	451	363	(4)	8	(1)	39
Total core portfolio	256,233	260,996	1,508	1,246	(7)	2	(24)	37
Non-core portfolio								
Residential mortgage	8,823	10,399	618	587	(3)	(32)	(4)	(49)
Home equity	4,192	4,982	189	173	(16)	(210)	(44)	(385)
Total non-core portfolio	13,015	15,381	807	760	(19)	(242)	(48)	(434)
Consumer real estate portfolio								
Residential mortgage	232,718	236,169	1,675	1,470	(6)	(38)	(27)	(51)
Home equity	36,530	40,208	640	536	(20)	(202)	(45)	(346)
Total consumer real estate portfolio	\$ 269,248	\$ 276,377	\$ 2,315	\$ 2,006	\$ (26)	\$ (240)	\$ (72)	\$ (397)

	Allowance for Credit Losses		Provision for Credit Losses			
	September 30 2020	December 31 2019	Three Months Ended September 30		Nine Months Ended September 30	
			2020	2019	2020	2019
<b>Core portfolio</b>						
Residential mortgage	\$ 371	\$ 229	\$ 8	\$ (4)	\$ 135	\$ 3
Home equity	603	120	(4)	(19)	144	(52)
<b>Total core portfolio</b>	<b>974</b>	<b>349</b>	<b>4</b>	<b>(23)</b>	<b>279</b>	<b>(49)</b>
<b>Non-core portfolio</b>						
Residential mortgage	86	96	2	(39)	78	(91)
Home equity <sup>(2)</sup>	(67)	101	(15)	(250)	(2)	(481)
<b>Total non-core portfolio</b>	<b>19</b>	<b>197</b>	<b>(13)</b>	<b>(289)</b>	<b>76</b>	<b>(572)</b>
<b>Consumer real estate portfolio</b>						
Residential mortgage	457	325	10	(43)	213	(88)
Home equity <sup>(3)</sup>	536	221	(19)	(269)	142	(533)
<b>Total consumer real estate portfolio</b>	<b>\$ 993</b>	<b>\$ 546</b>	<b>\$ (9)</b>	<b>\$ (312)</b>	<b>\$ 355</b>	<b>\$ (621)</b>

<sup>(1)</sup> Outstandings and nonperforming loans exclude loans accounted for under the fair value option. Consumer loans accounted for under the fair value option include residential mortgage loans of \$314 million and \$257 million and home equity loans of \$343 million and \$337 million at September 30, 2020 and December 31, 2019. For more information, see *Note 15 – Fair Value Option* to the Consolidated Financial Statements.

<sup>(2)</sup> The home equity non-core allowance is in a negative position at September 30, 2020 as it includes expected recoveries of amounts previously charged off.

<sup>(3)</sup> Home equity allowance includes a reserve for unfunded lending commitments of \$138 million at September 30, 2020.

We believe that the presentation of information adjusted to exclude the impact of the fully-insured loan portfolio and loans accounted for under the fair value option is more representative of the ongoing operations and credit quality of the business. As a result, in the following tables and discussions of the residential mortgage and home equity portfolios, we exclude loans accounted for under the fair value option and provide information that excludes the impact of the fully-insured loan portfolio in certain credit quality statistics.

### Residential Mortgage

The residential mortgage portfolio made up the largest percentage of our consumer loan portfolio at 53 percent of consumer loans and leases at September 30, 2020. Approximately 53 percent of the residential mortgage portfolio was in *Consumer Banking* and 39 percent was in *GWIM*. The remaining portion was in *All Other* and was comprised of loans used in our overall ALM activities, delinquent FHA loans repurchased pursuant to our servicing agreements with the

Government National Mortgage Association as well as loans repurchased related to our representations and warranties.

Outstanding balances in the residential mortgage portfolio decreased \$3.5 billion during the nine months ended September 30, 2020 as both loan sales and runoff were partially offset by originations.

At September 30, 2020 and December 31, 2019, the residential mortgage portfolio included \$11.7 billion and \$18.7 billion of outstanding fully-insured loans, of which \$3.0 billion and \$11.2 billion had FHA insurance with the remainder protected by Fannie Mae long-term standby agreements. The decline was primarily driven by sales of loans with FHA insurance during the nine months ended September 30, 2020.

Table 20 presents certain residential mortgage key credit statistics on both a reported basis and excluding the fully-insured loan portfolio. The following discussion presents the residential mortgage portfolio excluding the fully-insured loan portfolio.

**Table 20 Residential Mortgage – Key Credit Statistics**

	Reported Basis <sup>(1)</sup>		Excluding Fully-insured Loans <sup>(1)</sup>	
	September 30 2020	December 31 2019	September 30 2020	December 31 2019
(Dollars in millions)				
Outstandings	\$ 232,718	\$ 236,169	\$ 220,996	\$ 217,479
Accruing past due 30 days or more	2,607	3,108	1,394	1,296
Accruing past due 90 days or more	837	1,088	—	—
Nonperforming loans <sup>(2)</sup>	1,675	1,470	1,675	1,470
<b>Percent of portfolio</b>				
Refreshed LTV greater than 90 but less than or equal to 100	2 %	2 %	2 %	2 %
Refreshed LTV greater than 100	1	1	1	1
Refreshed FICO below 620	2	3	1	2
2006 and 2007 vintages <sup>(3)</sup>	3	4	3	4

<sup>(1)</sup> Outstandings, accruing past due, nonperforming loans and percentages of portfolio exclude loans accounted for under the fair value option. For information on our interest accrual policies and delinquency status for loan modifications related to the COVID-19 pandemic, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

<sup>(2)</sup> Includes loans that are contractually current which primarily consist of collateral-dependent TDRs, including those that have been discharged in Chapter 7 bankruptcy and loans that have not yet demonstrated a sustained period of payment performance following a TDR.

<sup>(3)</sup> These vintages of loans accounted for \$481 million, or 29 percent, and \$365 million, or 25 percent, of nonperforming residential mortgage loans at September 30, 2020 and December 31, 2019.

Nonperforming outstanding balances in the residential mortgage portfolio increased \$205 million during the nine months ended September 30, 2020 primarily driven by loans with deferrals that expired and have subsequently become nonperforming, and the inclusion of certain loans that, upon adoption of the new credit loss standard, became accounted for on an individual basis, which previously had been accounted for under a pool basis. Of the nonperforming residential mortgage loans at September 30, 2020, \$531 million, or 32 percent, were current on contractual payments. Loans accruing past due 30 days or more increased \$98 million driven primarily by borrowers whose deferrals expired throughout the year and have subsequently become delinquent.

Net charge-offs increased \$32 million and \$24 million to a net recovery of \$6 million and \$27 million for the three and nine months ended September 30, 2020 compared to the same periods in 2019. This increase is due largely to lower recoveries from the sales of previously charged-off loans.

Of the \$221.0 billion in total residential mortgage loans outstanding at September 30, 2020, as shown in Table 20, 27 percent were originated as interest-only loans. The outstanding balance of interest-only residential mortgage loans that have entered the amortization period was \$6.3 billion, or 11 percent, at September 30, 2020. Residential mortgage loans that have entered the amortization period generally have experienced a higher rate of early stage delinquencies and nonperforming status compared to the residential mortgage portfolio as a

whole. At September 30, 2020, \$101 million, or two percent of outstanding interest-only residential mortgages that had entered the amortization period were accruing past due 30 days or more compared to \$1.4 billion, or less than one percent, for the entire residential mortgage portfolio. In addition, at September 30, 2020, \$329 million, or five percent, of outstanding interest-only residential mortgage loans that had entered the amortization period were nonperforming, of which \$71 million were contractually current, compared to \$1.7 billion, or one percent, for the entire residential mortgage portfolio. Loans that have yet to enter the amortization period in our interest-only residential mortgage portfolio are primarily well-collateralized loans to our wealth management clients and have an interest-only period of three to ten years. Approximately 97 percent of these loans that have yet to enter the amortization period will not be required to make a fully-amortizing payment until 2022 or later.

Table 21 presents outstandings, nonperforming loans and net charge-offs by certain state concentrations for the residential mortgage portfolio. The Los Angeles-Long Beach-Santa Ana Metropolitan Statistical Area (MSA) within California represented 16 percent of outstandings at both September 30, 2020 and December 31, 2019. In the New York area, the New York-Northern New Jersey-Long Island MSA made up 14 percent and 13 percent of outstandings at September 30, 2020 and December 31, 2019.

**Table 21 Residential Mortgage State Concentrations**

	Outstandings <sup>(1)</sup>		Nonperforming <sup>(1)</sup>		Net Charge-offs			
	September 30 2020	December 31 2019	September 30 2020	December 31 2019	Three Months Ended September 30		Nine Months Ended September 30	
					2020	2019	2020	2019
(Dollars in millions)								
California	\$ 89,467	\$ 88,998	\$ 390	\$ 274	\$ (5)	\$ (12)	\$ (16)	\$ (22)
New York	23,935	22,385	238	196	1	1	2	2
Florida	13,155	12,833	161	143	(1)	(8)	(4)	(12)
Texas	9,121	8,943	73	65	—	—	—	(1)
New Jersey	9,081	8,734	84	77	(1)	(2)	(1)	(4)
Other	76,237	75,586	729	715	—	(17)	(8)	(14)
<b>Residential mortgage loans</b>	<b>\$ 220,996</b>	<b>\$ 217,479</b>	<b>\$ 1,675</b>	<b>\$ 1,470</b>	<b>\$ (6)</b>	<b>\$ (38)</b>	<b>\$ (27)</b>	<b>\$ (51)</b>
Fully-insured loan portfolio	11,722	18,690						
<b>Total residential mortgage loan portfolio</b>	<b>\$ 232,718</b>	<b>\$ 236,169</b>						

<sup>(1)</sup> Outstandings and nonperforming loans exclude loans accounted for under the fair value option.

## Home Equity

At September 30, 2020, the home equity portfolio made up eight percent of the consumer portfolio and was comprised of home equity lines of credit (HELOCs), home equity loans and reverse mortgages. We no longer originate home equity loans or reverse mortgages.

At September 30, 2020, our HELOC portfolio had an outstanding balance of \$34.2 billion, or 94 percent of the total home equity portfolio, compared to \$37.5 billion, or 93 percent, at December 31, 2019. HELOCs generally have an initial draw period of 10 years, and after the initial draw period ends, the loans generally convert to 15- or 20-year amortizing loans.

At September 30, 2020 and December 31, 2019, our home equity loan portfolio had an outstanding balance of \$974 million and \$1.2 billion, or three percent, of the total home equity portfolio. At September 30, 2020, our reverse mortgage portfolio had an outstanding balance of \$1.3 billion, or three percent of the total home equity portfolio, compared to \$1.5 billion, or four percent, at December 31, 2019.

At September 30, 2020, 80 percent of the home equity portfolio was in *Consumer Banking*, 12 percent was in *All Other* and the remainder of the portfolio was primarily in *GWIM*. Outstanding balances in the home equity portfolio decreased \$3.7 billion during the nine months ended September 30, 2020 primarily due to paydowns outpacing new originations and draws on existing lines. Of the total home equity portfolio at September 30, 2020 and December 31, 2019, \$14.3 billion, or 39 percent, and \$15.0 billion, or 37 percent, were in first-lien positions. At September 30, 2020, outstanding balances in the home equity portfolio that were in a second-lien or more junior-lien position and where we also held the first-lien loan totaled \$6.3 billion, or 17 percent, of our total home equity portfolio.

Unused HELOCs totaled \$43.5 billion and \$43.6 billion at September 30, 2020 and December 31, 2019. The HELOC utilization rate was 44 percent and 46 percent at September 30, 2020 and December 31, 2019.

Table 22 presents certain home equity portfolio key credit statistics.

**Table 22 Home Equity – Key Credit Statistics <sup>(1)</sup>**

(Dollars in millions)

	September 30 2020	December 31 2019
Outstandings	\$ 36,530	\$ 40,208
Accruing past due 30 days or more <sup>(2)</sup>	215	218
Nonperforming loans <sup>(2, 3)</sup>	640	536
<b>Percent of portfolio</b>		
Refreshed CLTV greater than 90 but less than or equal to 100	1 %	1 %
Refreshed CLTV greater than 100	2	2
Refreshed FICO below 620	3	3
2006 and 2007 vintages <sup>(4)</sup>	16	18

<sup>(1)</sup> Outstandings, accruing past due, nonperforming loans and percentages of the portfolio exclude loans accounted for under the fair value option. For information on our interest accrual policies and delinquency status for loan modifications related to the COVID-19 pandemic, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

<sup>(2)</sup> Accruing past due 30 days or more include \$30 million at both September 30, 2020 and December 31, 2019, and nonperforming loans include \$84 million and \$57 million of loans where we serviced the underlying first lien at September 30, 2020 and December 31, 2019.

<sup>(3)</sup> Includes loans that are contractually current which primarily consist of collateral-dependent TDRs, including those that have been discharged in Chapter 7 bankruptcy, junior-lien loans where the underlying first lien is 90 days or more past due, as well as loans that have not yet demonstrated a sustained period of payment performance following a TDR.

<sup>(4)</sup> These vintages of loans accounted for 36 percent and 34 percent of nonperforming home equity loans at September 30, 2020 and December 31, 2019.

Nonperforming outstanding balances in the home equity portfolio increased \$104 million during the nine months ended September 30, 2020 primarily driven by loans with deferrals that expired and have subsequently become nonperforming. Of the nonperforming home equity loans at September 30, 2020, \$262 million, or 41 percent, were current on contractual payments. In addition, \$223 million, or 35 percent, of nonperforming home equity loans were 180 days or more past due and had been written down to the estimated fair value of the collateral, less costs to sell. Accruing loans that were 30 days or more past due decreased \$3 million during the nine months ended September 30, 2020.

Net charge-offs increased \$182 million to a net recovery of \$20 million, and \$301 million to a net recovery of \$45 million for the three and nine months ended September 30, 2020 compared to the same periods in 2019 as the prior-year period included recoveries from non-core home equity loan sales.

Of the \$36.5 billion in total home equity portfolio outstandings at September 30, 2020, as shown in Table 22, 15 percent require interest-only payments. The outstanding balance of HELOCs that have reached the end of their draw period and have entered the amortization period was \$9.9 billion at September 30, 2020. The HELOCs that have entered the

amortization period have experienced a higher percentage of early stage delinquencies and nonperforming status when compared to the HELOC portfolio as a whole. At September 30, 2020, \$145 million, or one percent of outstanding HELOCs that had entered the amortization period were accruing past due 30 days or more. In addition, at September 30, 2020, \$473 million, or five percent, were nonperforming. Loans that have yet to enter the amortization period in our interest-only portfolio are primarily post-2008 vintages and generally have better credit quality than the previous vintages that had entered the amortization period. We communicate to contractually current customers more than a year prior to the end of their draw period to inform them of the potential change to the payment structure before entering the amortization period, and provide payment options to customers prior to the end of the draw period.

Although we do not actively track how many of our home equity customers pay only the minimum amount due on their home equity loans and lines, we can infer some of this information through a review of our HELOC portfolio that we service and that is still in its revolving period. During the three months ended September 30, 2020, 17 percent of these customers with an outstanding balance did not pay any principal on their HELOCs.

Table 23 presents outstandings, nonperforming balances and net charge-offs by certain state concentrations for the home equity portfolio. In the New York area, the New York-Northern New Jersey-Long Island MSA made up 13 percent of the outstanding home equity portfolio at both September 30, 2020

and December 31, 2019. The Los Angeles-Long Beach-Santa Ana MSA within California made up 11 percent of the outstanding home equity portfolio at both September 30, 2020 and December 31, 2019.

**Table 23 Home Equity State Concentrations**

(Dollars in millions)	Outstandings <sup>(1)</sup>		Nonperforming <sup>(1)</sup>		Net Charge-offs			
					Three Months Ended September 30		Nine Months Ended September 30	
	September 30 2020	December 31 2019	September 30 2020	December 31 2019	2020	2019	2020	2019
California	\$ 10,171	\$ 11,232	\$ 136	\$ 101	\$ (8)	\$ (54)	\$ (17)	\$ (109)
Florida	3,916	4,327	82	71	(2)	(30)	(7)	(72)
New Jersey	2,925	3,216	67	56	—	(13)	(1)	(11)
New York	2,636	2,899	100	85	(1)	(10)	—	(4)
Massachusetts	1,826	2,023	34	29	—	(6)	1	(6)
Other	15,056	16,511	221	194	(9)	(89)	(21)	(144)
<b>Total home equity loan portfolio</b>	<b>\$ 36,530</b>	<b>\$ 40,208</b>	<b>\$ 640</b>	<b>\$ 536</b>	<b>\$ (20)</b>	<b>\$ (202)</b>	<b>\$ (45)</b>	<b>\$ (346)</b>

<sup>(1)</sup> Outstandings and nonperforming loans exclude loans accounted for under the fair value option.

#### Credit Card

At September 30, 2020, 97 percent of the credit card portfolio was managed in *Consumer Banking* with the remainder in *GWIM*. Outstandings in the credit card portfolio decreased \$17.8 billion during the nine months ended September 30, 2020 to \$79.8 billion due to lower retail spending. Net charge-offs decreased \$208 million to \$509 million and \$280 million to \$1.9 billion during the three and nine months ended September 30, 2020 compared to the same periods in 2019 due to government stimulus benefits and payment deferrals associated with COVID-19. Credit card loans 30 days or more past due and still

accruing interest decreased \$765 million and loans 90 days or more past due and still accruing interest decreased \$496 million primarily due to government stimulus benefits and payment deferrals along with declines in loan balances associated with COVID-19.

Unused lines of credit for credit card increased to \$344.6 billion at September 30, 2020 from \$336.9 billion at December 31, 2019 driven by decreased consumer spending.

Table 24 presents certain state concentrations for the credit card portfolio.

**Table 24 Credit Card State Concentrations**

(Dollars in millions)	Outstandings		Accruing Past Due 90 Days or More <sup>(1)</sup>		Net Charge-offs			
					Three Months Ended September 30		Nine Months Ended September 30	
	September 30 2020	December 31 2019	September 30 2020	December 31 2019	2020	2019	2020	2019
California	\$ 12,820	\$ 16,135	\$ 96	\$ 178	\$ 92	\$ 132	\$ 347	\$ 398
Florida	7,634	9,075	73	135	66	90	252	272
Texas	6,578	7,815	51	93	45	58	166	180
New York	4,799	5,975	44	80	43	63	154	183
Washington	3,696	4,639	13	26	12	17	47	53
Other	44,307	53,969	269	530	251	357	978	1,138
<b>Total credit card portfolio</b>	<b>\$ 79,834</b>	<b>\$ 97,608</b>	<b>\$ 546</b>	<b>\$ 1,042</b>	<b>\$ 509</b>	<b>\$ 717</b>	<b>\$ 1,944</b>	<b>\$ 2,224</b>

<sup>(1)</sup> For information on our interest accrual policies and delinquency status for loan modifications related to the COVID-19 pandemic, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

#### Direct/Indirect Consumer

At September 30, 2020, 53 percent of the direct/indirect portfolio was included in *Consumer Banking* (consumer auto and specialty lending – automotive, recreational vehicle, marine, aircraft and consumer personal loans) and 47 percent was

included in *GWIM* (principally securities-based lending loans). Outstandings in the direct/indirect portfolio decreased \$1.1 billion during the nine months ended September 30, 2020 to \$89.9 billion primarily due to lower originations in Auto.

Table 25 presents certain state concentrations for the direct/indirect consumer loan portfolio.

**Table 25 Direct/Indirect State Concentrations**

(Dollars in millions)	Outstandings		Accruing Past Due 90 Days or More <sup>(1)</sup>		Net Charge-offs			
	September 30 2020	December 31 2019	September 30 2020	December 31 2019	Three Months Ended September 30		Nine Months Ended September 30	
					2020	2019	2020	2019
California	\$ 11,950	\$ 11,912	\$ 3	\$ 4	\$ 2	\$ 32	\$ 13	\$ 44
Florida	10,581	10,154	4	4	3	5	14	21
Texas	8,915	9,516	3	5	4	8	13	23
New York	6,542	6,394	2	1	2	3	6	9
New Jersey	3,472	3,468	—	1	—	1	1	3
Other	48,454	49,554	15	18	7	27	37	70
<b>Total direct/indirect loan portfolio</b>	<b>\$ 89,914</b>	<b>\$ 90,998</b>	<b>\$ 27</b>	<b>\$ 33</b>	<b>\$ 18</b>	<b>\$ 76</b>	<b>\$ 84</b>	<b>\$ 170</b>

<sup>(1)</sup> For information on our interest accrual policies and delinquency status for loan modifications related to the COVID-19 pandemic, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

### Nonperforming Consumer Loans, Leases and Foreclosed Properties Activity

Table 26 presents nonperforming consumer loans, leases and foreclosed properties activity for the three and nine months ended September 30, 2020 and 2019. During the nine months ended September 30, 2020, nonperforming consumer loans increased \$304 million to \$2.4 billion primarily driven by loans with deferrals that expired and have subsequently become nonperforming, as well as the inclusion of \$137 million of certain loans that were previously classified as purchased credit-impaired loans and accounted for under a pool basis.

At September 30, 2020, \$791 million, or 34 percent of nonperforming loans were 180 days or more past due and had been written down to their estimated property value less costs to sell. In addition, at September 30, 2020, \$831 million, or 35 percent of nonperforming consumer loans were modified and

are now current after successful trial periods, or are current loans classified as nonperforming loans in accordance with applicable policies.

Foreclosed properties decreased \$94 million during the nine months ended September 30, 2020 to \$135 million as liquidations outpaced additions.

Nonperforming loans also include certain loans that have been modified in TDRs where economic concessions have been granted to borrowers experiencing financial difficulties. Nonperforming TDRs are included in Table 26. For more information on our loan modification programs offered in response to the COVID-19 pandemic, which are not TDRs, see Executive Summary - Recent Developments – COVID-19 Pandemic on page 3 and *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

**Table 26 Nonperforming Consumer Loans, Leases and Foreclosed Properties Activity**

(Dollars in millions)	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
<b>Nonperforming loans and leases, beginning of period</b>	<b>\$ 2,191</b>	<b>\$ 3,027</b>	<b>\$ 2,053</b>	<b>\$ 3,842</b>
Additions	587	335	1,418	1,116
Reductions:				
Paydowns and payoffs	(113)	(197)	(303)	(580)
Sales	—	(748)	(31)	(1,414)
Returns to performing status <sup>(1)</sup>	(291)	(185)	(689)	(623)
Charge-offs	(13)	(23)	(62)	(80)
Transfers to foreclosed properties	(4)	(20)	(29)	(72)
<b>Total net additions/(reductions) to nonperforming loans and leases</b>	<b>166</b>	<b>(838)</b>	<b>304</b>	<b>(1,653)</b>
<b>Total nonperforming loans and leases, September 30</b>	<b>2,357</b>	<b>2,189</b>	<b>2,357</b>	<b>2,189</b>
<b>Foreclosed properties, September 30 <sup>(2)</sup></b>	<b>135</b>	<b>188</b>	<b>135</b>	<b>188</b>
<b>Nonperforming consumer loans, leases and foreclosed properties, September 30</b>	<b>\$ 2,492</b>	<b>\$ 2,377</b>	<b>\$ 2,492</b>	<b>\$ 2,377</b>
Nonperforming consumer loans and leases as a percentage of outstanding consumer loans and leases <sup>(3)</sup>	0.54 %	0.48 %		
Nonperforming consumer loans, leases and foreclosed properties as a percentage of outstanding consumer loans, leases and foreclosed properties <sup>(3)</sup>	0.57	0.52		

<sup>(1)</sup> Consumer loans may be returned to performing status when all principal and interest is current and full repayment of the remaining contractual principal and interest is expected, or when the loan otherwise becomes well-secured and is in the process of collection.

<sup>(2)</sup> Foreclosed property balances do not include properties insured by certain government-guaranteed loans, principally FHA-insured, of \$131 million and \$275 million at September 30, 2020 and 2019.

<sup>(3)</sup> Outstanding consumer loans and leases exclude loans accounted for under the fair value option.

Table 27 presents TDRs for the consumer real estate portfolio. Performing TDR balances are excluded from nonperforming loans and leases in Table 26. For more information on our loan modification programs offered in response to the COVID-19 pandemic, which are not TDRs, see Executive Summary - Recent Developments – COVID-19 Pandemic on page 3.

**Table 27 Consumer Real Estate Troubled Debt Restructurings**

(Dollars in millions)	September 30, 2020			December 31, 2019		
	Nonperforming	Performing	Total	Nonperforming	Performing	Total
Residential mortgage <sup>(1, 2)</sup>	\$ 852	\$ 3,079	\$ 3,931	\$ 921	\$ 3,832	\$ 4,753
Home equity <sup>(3)</sup>	241	876	1,117	252	977	1,229
<b>Total consumer real estate troubled debt restructurings</b>	<b>\$ 1,093</b>	<b>\$ 3,955</b>	<b>\$ 5,048</b>	<b>\$ 1,173</b>	<b>\$ 4,809</b>	<b>\$ 5,982</b>

<sup>(1)</sup> At September 30, 2020 and December 31, 2019, residential mortgage TDRs deemed collateral dependent totaled \$1.1 billion and \$1.2 billion, and included \$709 million and \$748 million of loans classified as nonperforming and \$386 million and \$468 million of loans classified as performing.

<sup>(2)</sup> At September 30, 2020 and December 31, 2019, residential mortgage performing TDRs include \$1.6 billion and \$2.1 billion of loans that were fully-insured.

<sup>(3)</sup> At September 30, 2020 and December 31, 2019, home equity TDRs deemed collateral dependent totaled \$408 million and \$442 million, and include \$206 million and \$209 million of loans classified as nonperforming and \$202 million and \$233 million of loans classified as performing.

In addition to modifying consumer real estate loans, we work with customers who are experiencing financial difficulty by modifying credit card and other consumer loans. Credit card and other consumer loan modifications generally involve a reduction in the customer's interest rate on the account and placing the customer on a fixed payment plan not exceeding 60 months.

Modifications of credit card and other consumer loans are made through programs utilizing direct customer contact, but may also utilize external programs. At September 30, 2020 and December 31, 2019, our credit card and other consumer TDR portfolio was \$699 million and \$679 million, of which \$624 million and \$570 million were current or less than 30 days past due under the modified terms.

### Commercial Portfolio Credit Risk Management

Commercial credit risk is evaluated and managed with the goal that concentrations of credit exposure continue to be aligned with our risk appetite. We review, measure and manage concentrations of credit exposure by industry, product, geography, customer relationship and loan size. We also review, measure and manage commercial real estate loans by geographic location and property type. In addition, within our non-U.S. portfolio, we evaluate exposures by region and by country. Tables 32, 35 and 38 summarize our concentrations. We also utilize syndications of exposure to third parties, loan sales, hedging and other risk mitigation techniques to manage the size and risk profile of the commercial credit portfolio. For more information on our industry concentrations, see Commercial Portfolio Credit Risk Management – Industry Concentrations on page 41 and Table 35.

For more information on our accounting policies regarding delinquencies, nonperforming status, net charge-offs and TDRs for the commercial portfolio, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

For information on the accounting for loan modifications related to the COVID-19 pandemic, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

### Commercial Credit Portfolio

During the nine months ended September 30, 2020, commercial asset quality weakened as a result of the economic impact from COVID-19. However, there were also positive signs during this period. The draws by large corporate and commercial clients contributing to the \$67.2 billion loan growth in the first quarter of 2020 have largely been repaid over the past six months as emergency or contingent funding was no longer needed or clients were able to access capital markets. Additionally, as part of the CARES Act, we had \$24.7 billion of PPP loans outstanding with our small business clients at September 30, 2020, which are included in U.S. small business commercial in the tables in this section. For more information on PPP loans, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

Credit quality of commercial real estate borrowers has begun to stabilize in many sectors as certain economies have reopened. Certain sectors, including hospitality and retail, continue to be negatively impacted as a result of COVID-19. Moreover, many real estate markets, while improving, are still experiencing some disruptions in demand, supply chain challenges and tenant difficulties.

The commercial allowance for loan and lease losses increased \$4.0 billion during the nine months ended September 30, 2020 to \$8.9 billion due to the deterioration in the economic outlook resulting from the impact of COVID-19. For more information, see Allowance for Credit Losses on page 44.

Total commercial utilized credit exposure decreased \$4.1 billion during the nine months ended September 30, 2020 to \$631.2 billion driven by lower loans held-for-sale (LHFS) and lower loans and leases. The utilization rate for loans and leases, standby letters of credit (SBLCs) and financial guarantees, and commercial letters of credit, in the aggregate, was 58 percent at both September 30, 2020 and December 31, 2019.



Table 28 presents commercial credit exposure by type for utilized, unfunded and total binding committed credit exposure. Commercial utilized credit exposure includes SBLCs and financial guarantees and commercial letters of credit that have been issued and for which we are legally bound to advance

funds under prescribed conditions during a specified time period, and excludes exposure related to trading account assets. Although funds have not yet been advanced, these exposure types are considered utilized for credit risk management purposes.

**Table 28 Commercial Credit Exposure by Type**

	Commercial Utilized <sup>(1)</sup>		Commercial Unfunded <sup>(2, 3, 4)</sup>		Total Commercial Committed	
	September 30 2020	December 31 2019	September 30 2020	December 31 2019	September 30 2020	December 31 2019
(Dollars in millions)						
Loans and leases	\$ 515,379	\$ 517,657	\$ 396,920	\$ 405,834	\$ 912,299	\$ 923,491
Derivative assets <sup>(5)</sup>	44,297	40,485	—	—	44,297	40,485
Standby letters of credit and financial guarantees	35,406	36,062	531	468	35,937	36,530
Debt securities and other investments	24,049	25,546	5,066	5,101	29,115	30,647
Loans held-for-sale	3,732	7,047	6,553	15,135	10,285	22,182
Operating leases	6,482	6,660	—	—	6,482	6,660
Commercial letters of credit	817	1,049	296	451	1,113	1,500
Other	1,033	800	—	—	1,033	800
<b>Total</b>	<b>\$ 631,195</b>	<b>\$ 635,306</b>	<b>\$ 409,366</b>	<b>\$ 426,989</b>	<b>\$ 1,040,561</b>	<b>\$ 1,062,295</b>

<sup>(1)</sup> Commercial utilized exposure includes loans of \$6.6 billion and \$7.7 billion and issued letters of credit with a notional amount of \$121 million and \$170 million accounted for under the fair value option at September 30, 2020 and December 31, 2019.

<sup>(2)</sup> Commercial unfunded exposure includes commitments accounted for under the fair value option with a notional amount of \$3.2 billion and \$4.2 billion at September 30, 2020 and December 31, 2019.

<sup>(3)</sup> Excludes unused business card lines, which are not legally binding.

<sup>(4)</sup> Includes the notional amount of unfunded legally binding lending commitments net of amounts distributed (i.e., syndicated or participated) to other financial institutions. The distributed amounts were \$10.3 billion and \$10.6 billion at September 30, 2020 and December 31, 2019.

<sup>(5)</sup> Derivative assets are carried at fair value, reflect the effects of legally enforceable master netting agreements and have been reduced by cash collateral of \$41.3 billion and \$33.9 billion at September 30, 2020 and December 31, 2019. Not reflected in utilized and committed exposure is additional non-cash derivative collateral held of \$35.0 billion and \$35.2 billion at September 30, 2020 and December 31, 2019, which consists primarily of other marketable securities.

Outstanding commercial loans and leases decreased \$2.3 billion during the nine months ended September 30, 2020 primarily due to repayments, partially offset by \$24.7 billion of PPP loans outstanding at September 30, 2020. Nonperforming commercial loans increased \$694 million across industries, and commercial reservable criticized utilized exposure increased

\$24.3 billion spread across several industries, including travel and entertainment, as a result of weaker economic conditions arising from COVID-19. Table 29 presents our commercial loans and leases portfolio and related credit quality information at September 30, 2020 and December 31, 2019.

**Table 29 Commercial Credit Quality**

	Outstandings		Nonperforming		Accruing Past Due 90 Days or More <sup>(3)</sup>	
	September 30 2020	December 31 2019	September 30 2020	December 31 2019	September 30 2020	December 31 2019
(Dollars in millions)						
Commercial and industrial:						
U.S. commercial	\$ 293,934	\$ 307,048	\$ 1,351	\$ 1,094	\$ 199	\$ 106
Non-U.S. commercial	96,151	104,966	338	43	28	8
Total commercial and industrial	390,085	412,014	1,689	1,137	227	114
Commercial real estate	62,454	62,689	414	280	2	19
Commercial lease financing	17,413	19,880	14	32	32	20
	469,952	494,583	2,117	1,449	261	153
U.S. small business commercial <sup>(1)</sup>	38,850	15,333	76	50	77	97
Commercial loans excluding loans accounted for under the fair value option	508,802	509,916	2,193	1,499	338	250
Loans accounted for under the fair value option <sup>(2)</sup>	6,577	7,741				
<b>Total commercial loans and leases</b>	<b>\$ 515,379</b>	<b>\$ 517,657</b>				

<sup>(1)</sup> Includes card-related products.

<sup>(2)</sup> Commercial loans accounted for under the fair value option include U.S. commercial of \$3.4 billion and \$4.7 billion and non-U.S. commercial of \$3.2 billion and \$3.1 billion at September 30, 2020 and December 31, 2019. For more information on the fair value option, see Note 15 – Fair Value Option to the Consolidated Financial Statements.

<sup>(3)</sup> For information on our interest accrual policies and delinquency status for loan modifications related to the COVID-19 pandemic, see Note 1 – Summary of Significant Accounting Principles to the Consolidated Financial Statements.



Table 30 presents net charge-offs and related ratios for our commercial loans and leases for the three and nine months ended September 30, 2020 and 2019.

**Table 30 Commercial Net Charge-offs and Related Ratios**

	Net Charge-offs				Net Charge-off Ratios <sup>(1)</sup>			
	Three Months Ended September 30		Nine Months Ended September 30		Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019	2020	2019	2020	2019
(Dollars in millions)								
Commercial and industrial:								
U.S. commercial	\$ 154	\$ 53	\$ 536	\$ 202	0.20 %	0.07 %	0.23 %	0.09 %
Non-U.S. commercial	57	67	90	115	0.23	0.26	0.11	0.15
Total commercial and industrial	211	120	626	317	0.21	0.12	0.20	0.11
Commercial real estate	106	(1)	169	8	0.66	—	0.35	0.02
Commercial lease financing	24	1	60	14	0.53	0.02	0.43	0.09
	341	120	855	339	0.28	0.10	0.23	0.09
U.S. small business commercial	67	69	215	202	0.69	1.83	1.01	1.83
<b>Total commercial</b>	<b>\$ 408</b>	<b>\$ 189</b>	<b>\$ 1,070</b>	<b>\$ 541</b>	<b>0.31</b>	<b>0.15</b>	<b>0.27</b>	<b>0.15</b>

<sup>(1)</sup> Net charge-off ratios are calculated as net charge-offs divided by average outstanding loans and leases excluding loans accounted for under the fair value option.

Table 31 presents commercial reservable criticized utilized exposure by loan type. Criticized exposure corresponds to the Special Mention, Substandard and Doubtful asset categories as defined by regulatory authorities. Total commercial reservable criticized utilized exposure increased \$24.3 billion during the nine months ended September 30, 2020, which was spread across several industries, including travel and entertainment, as a result of weaker economic conditions arising from COVID-19. At September 30, 2020 and December 31, 2019, 84 percent and 90 percent of commercial reservable criticized utilized exposure was secured.

**Table 31 Commercial Reservable Criticized Utilized Exposure<sup>(1, 2)</sup>**

	September 30, 2020		December 31, 2019	
(Dollars in millions)				
Commercial and industrial:				
U.S. commercial	\$ 22,223	6.88 %	\$ 8,272	2.46 %
Non-U.S. commercial	4,381	4.30	989	0.89
Total commercial and industrial	26,604	6.26	9,261	2.07
Commercial real estate	7,001	10.89	1,129	1.75
Commercial lease financing	657	3.77	329	1.66
	34,262	6.76	10,719	2.01
U.S. small business commercial	1,448	3.73	733	4.78
<b>Total commercial reservable criticized utilized exposure<sup>(1)</sup></b>	<b>\$ 35,710</b>	<b>6.55</b>	<b>\$ 11,452</b>	<b>2.09</b>

<sup>(1)</sup> Total commercial reservable criticized utilized exposure includes loans and leases of \$33.9 billion and \$10.7 billion and commercial letters of credit of \$1.8 billion and \$715 million at September 30, 2020 and December 31, 2019.

<sup>(2)</sup> Percentages are calculated as commercial reservable criticized utilized exposure divided by total commercial reservable criticized utilized exposure for each exposure category.

### Commercial and Industrial

Commercial and industrial loans include U.S. commercial and non-U.S. commercial portfolios.

#### U.S. Commercial

At September 30, 2020, 66 percent of the U.S. commercial loan portfolio, excluding small business, was managed in *Global Banking*, 17 percent in *Global Markets*, 15 percent in *GWIM* (generally business-purpose loans for high net worth clients) and the remainder primarily in *Consumer Banking*. U.S. commercial loans decreased \$13.1 billion during the nine months ended September 30, 2020 primarily in *Global Banking*. Reservable criticized utilized exposure increased \$14.0 billion, which was spread across several industries, including travel and entertainment, as a result of weaker economic conditions arising from COVID-19.

#### Non-U.S. Commercial

At September 30, 2020, 81 percent of the non-U.S. commercial loan portfolio was managed in *Global Banking* and 19 percent in *Global Markets*. Non-U.S. commercial loans decreased \$8.8 billion during the nine months ended September 30, 2020, primarily in *Global Banking*. For information on the non-U.S. commercial portfolio, see Non-U.S. Portfolio on page 43.

### Commercial Real Estate

Commercial real estate primarily includes commercial loans secured by non-owner-occupied real estate and is dependent on the sale or lease of the real estate as the primary source of repayment. Outstanding loans remained relatively flat at \$62.5 billion at September 30, 2020 as paydowns were offset by new originations and increased utilizations under existing credit facilities. Reservable criticized utilized exposure increased \$5.9 billion due to downgrades driven by the impact of COVID-19 across industries, led by hotels. Although we have observed property-level improvements in a number of the most impacted sectors, the length of time for recovery has been slower than originally anticipated, which has prompted these downgrades. The portfolio remains diversified across property types and geographic regions. California represented the largest state concentration at 23 percent and 24 percent of the commercial real estate portfolio at September 30, 2020 and December 31, 2019. The commercial real estate portfolio is predominantly managed in *Global Banking* and consists of loans made primarily to public and private developers, and commercial real estate firms.

For the three and nine months ended September 30, 2020, we continued to see low default rates and varying degrees of improvement in the non-residential portfolio. We use a number of proactive risk mitigation initiatives to reduce adversely rated exposure in the commercial real estate portfolio, including

transfers of deteriorating exposures to management by independent special asset officers and the pursuit of loan restructurings or asset sales to achieve the best results for our customers and the Corporation.

Table 32 presents outstanding commercial real estate loans by geographic region, based on the geographic location of the collateral, and by property type.

**Table 32 Outstanding Commercial Real Estate Loans**

(Dollars in millions)		September 30 2020	December 31 2019
<b>By Geographic Region</b>			
California	\$	14,364	\$ 14,910
Northeast		12,030	12,408
Southwest		9,070	8,408
Southeast		6,637	5,937
Florida		4,262	3,984
Midwest		3,226	3,203
Illinois		3,028	3,349
Midsouth		2,496	2,468
Northwest		1,598	1,638
Non-U.S.		3,707	3,724
Other <sup>(1)</sup>		2,036	2,660
<b>Total outstanding commercial real estate loans</b>		<b>\$ 62,454</b>	<b>\$ 62,689</b>
<b>By Property Type</b>			
<b>Non-residential</b>			
Office	\$	17,650	\$ 17,902
Industrial / Warehouse		9,289	8,677
Shopping centers / Retail		7,850	8,183
Multi-family rental		7,524	7,250
Hotels / Motels		7,418	6,982
Unsecured		2,598	3,438
Multi-use		1,709	1,788
Other		7,420	6,958
<b>Total non-residential</b>		<b>61,458</b>	<b>61,178</b>
<b>Residential</b>		<b>996</b>	<b>1,511</b>
<b>Total outstanding commercial real estate loans</b>		<b>\$ 62,454</b>	<b>\$ 62,689</b>

<sup>(1)</sup> Includes unsecured loans to real estate investment trusts and national home builders whose portfolios of properties span multiple geographic regions and properties in the states of Colorado, Utah, Hawaii, Wyoming and Montana.

### U.S. Small Business Commercial

The U.S. small business commercial loan portfolio is comprised of small business card loans and small business loans primarily managed in *Consumer Banking*, and includes \$24.7 billion of PPP loans outstanding at September 30, 2020. Excluding PPP, credit card-related products were 51 percent and 52 percent of the U.S. small business commercial portfolio at September 30, 2020 and December 31, 2019. Of the U.S. small business commercial net charge-offs, 93 percent were credit card-related products for the three and nine months ended September 30, 2020 compared to 92 percent and 95 percent for the same periods in 2019.

### Nonperforming Commercial Loans, Leases and Foreclosed Properties Activity

Table 33 presents the nonperforming commercial loans, leases and foreclosed properties activity during the three and nine months ended September 30, 2020 and 2019. Nonperforming loans do not include loans accounted for under the fair value option. During the nine months ended September 30, 2020, nonperforming commercial loans and leases increased \$694 million to \$2.2 billion, primarily driven by the impact of COVID-19. At September 30, 2020, 85 percent of commercial nonperforming loans, leases and foreclosed properties were secured and 63 percent were contractually current. Commercial nonperforming loans were carried at 78 percent of their unpaid principal balance before consideration of the allowance for loan and lease losses, as the carrying value of these loans has been reduced to the estimated collateral value less costs to sell.

**Table 33** Nonperforming Commercial Loans, Leases and Foreclosed Properties Activity <sup>(1, 2)</sup>

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
<b>Nonperforming loans and leases, beginning of period</b>	<b>\$ 2,202</b>	<b>\$ 1,160</b>	<b>\$ 1,499</b>	<b>\$ 1,102</b>
Additions	656	492	2,326	1,521
Reductions:				
Paydowns	(216)	(161)	(605)	(479)
Sales	(50)	(33)	(76)	(193)
Returns to performing status <sup>(3)</sup>	(21)	(48)	(45)	(105)
Charge-offs	(367)	(123)	(895)	(371)
Transfers to foreclosed properties	—	—	—	(7)
Transfers to loans held-for-sale	(11)	—	(11)	(181)
Total net additions/(reductions) to nonperforming loans and leases	(9)	127	694	185
<b>Total nonperforming loans and leases, September 30</b>	<b>2,193</b>	<b>1,287</b>	<b>2,193</b>	<b>1,287</b>
<b>Foreclosed properties, September 30</b>	<b>45</b>	<b>59</b>	<b>45</b>	<b>59</b>
<b>Nonperforming commercial loans, leases and foreclosed properties, September 30</b>	<b>\$ 2,238</b>	<b>\$ 1,346</b>	<b>\$ 2,238</b>	<b>\$ 1,346</b>
Nonperforming commercial loans and leases as a percentage of outstanding commercial loans and leases <sup>(4)</sup>	0.43 %	0.25 %		
Nonperforming commercial loans, leases and foreclosed properties as a percentage of outstanding commercial loans, leases and foreclosed properties <sup>(4)</sup>	0.44	0.26		

<sup>(1)</sup> Balances do not include nonperforming loans held-for-sale of \$184 million and \$237 million at September 30, 2020 and 2019.

<sup>(2)</sup> Includes U.S. small business commercial activity. Small business card loans are excluded as they are not classified as nonperforming.

<sup>(3)</sup> Commercial loans and leases may be returned to performing status when all principal and interest is current and full repayment of the remaining contractual principal and interest is expected, or when the loan otherwise becomes well-secured and is in the process of collection. TDRs are generally classified as performing after a sustained period of demonstrated payment performance.

<sup>(4)</sup> Outstanding commercial loans exclude loans accounted for under the fair value option.

Table 34 presents our commercial TDRs by product type and performing status. U.S. small business commercial TDRs are comprised of renegotiated small business card loans and small business loans. The renegotiated small business card loans are not classified as nonperforming as they are charged off no later than the end of the month in which the loan becomes 180 days

past due. For more information on our loan modification programs offered in response to the COVID-19 pandemic, which are not TDRs, see Executive Summary - Recent Developments – COVID-19 Pandemic on page 3 and *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

**Table 34** Commercial Troubled Debt Restructurings

	September 30, 2020			December 31, 2019		
	Nonperforming	Performing	Total	Nonperforming	Performing	Total
(Dollars in millions)						
Commercial and industrial:						
U.S. commercial	\$ 743	\$ 996	\$ 1,739	\$ 617	\$ 999	\$ 1,616
Non-U.S. commercial	82	128	210	41	193	234
Total commercial and industrial	825	1,124	1,949	658	1,192	1,850
Commercial real estate	260	34	294	212	14	226
Commercial lease financing	2	28	30	18	31	49
	1,087	1,186	2,273	888	1,237	2,125
U.S. small business commercial	—	28	28	—	27	27
<b>Total commercial troubled debt restructurings</b>	<b>\$ 1,087</b>	<b>\$ 1,214</b>	<b>\$ 2,301</b>	<b>\$ 888</b>	<b>\$ 1,264</b>	<b>\$ 2,152</b>

## Industry Concentrations

Table 35 presents commercial committed and utilized credit exposure by industry and the total net credit default protection purchased to cover the funded and unfunded portions of certain credit exposures. Our commercial credit exposure is diversified across a broad range of industries. Total commercial committed exposure decreased \$21.7 billion, or two percent, during the nine months ended September 30, 2020 to \$1.0 trillion. The decrease in commercial committed exposure was concentrated in the Asset managers and funds, Global commercial banks, Utilities, and Pharmaceuticals and biotechnology industry sectors. Decreases were partially offset by increased exposure to the Automobiles and components and the Healthcare equipment and services industry sectors.

For information on industry limits, see Commercial Portfolio Credit Risk Management - Industry Concentrations in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

Asset managers and funds, our largest industry concentration with committed exposure of \$97.5 billion, decreased \$12.6

billion, or 11 percent, during the nine months ended September 30, 2020.

Real estate, our second largest industry concentration with committed exposure of \$95.3 billion, decreased \$1.1 billion, or one percent, during the nine months ended September 30, 2020. For more information on the commercial real estate and related portfolios, see Commercial Portfolio Credit Risk Management – Commercial Real Estate on page 39.

Capital goods, our third largest industry concentration with committed exposure of \$83.2 billion, increased \$2.3 billion, or three percent, during the nine months ended September 30, 2020 with the increase largely occurring in the machinery, aerospace and defense, and building products categories, partially offset by a decrease in trading companies and distributors, construction and engineering, and industrial conglomerates.

Given the widespread impact the COVID-19 pandemic is having on the U.S. and global economy, a number of industries have been and continue to be adversely impacted. We continue to monitor all industries, particularly higher risk industries which

are experiencing or could experience a more significant impact to their financial condition. The impact of the COVID-19 pandemic has also placed significant stress on global demand for oil, resulting in a steep decline in prices. Our energy-related committed exposure decreased \$1.8 billion, or five percent, during the nine months ended September 30, 2020 to \$34.5

billion, driven by declines in exploration and production, energy equipment and services and refining and marketing exposure offset, in part, by an increase in our integrated client exposure. For more information on COVID-19, see Executive Summary - Recent Developments – COVID-19 Pandemic on page 3.

**Table 35 Commercial Credit Exposure by Industry <sup>(1)</sup>**

	Commercial Utilized		Total Commercial Committed <sup>(2)</sup>	
	September 30 2020	December 31 2019	September 30 2020	December 31 2019
(Dollars in millions)				
Asset managers and funds	\$ 63,360	\$ 71,386	\$ 97,518	\$ 110,069
Real estate <sup>(3)</sup>	72,105	70,361	95,251	96,370
Capital goods	42,899	41,082	83,159	80,892
Finance companies	43,396	40,173	66,964	63,942
Healthcare equipment and services	36,554	34,353	61,094	55,918
Government and public education	43,699	41,889	56,785	53,566
Materials	25,478	26,663	51,316	52,129
Retailing	27,085	25,868	49,602	48,317
Consumer services	32,016	28,434	48,631	49,071
Food, beverage and tobacco	22,706	24,163	45,019	45,956
Commercial services and supplies	22,274	23,103	39,219	38,944
Transportation	25,157	23,449	34,668	33,028
Energy	15,432	16,406	34,514	36,326
Utilities	12,488	12,383	29,501	36,060
Individuals and trusts	21,171	18,927	27,954	27,817
Media	13,616	12,445	25,802	23,645
Global commercial banks	21,295	30,171	23,444	32,345
Technology hardware and equipment	9,875	10,646	22,563	24,072
Software and services	10,767	10,432	21,104	20,556
Consumer durables and apparel	10,053	10,193	20,972	21,245
Automobiles and components	11,916	7,345	19,391	14,910
Vehicle dealers	14,598	18,013	18,457	21,435
Pharmaceuticals and biotechnology	5,142	5,964	15,634	20,206
Insurance	6,310	6,673	13,962	15,218
Telecommunication services	7,063	9,154	13,441	16,113
Food and staples retailing	5,166	6,290	10,470	10,392
Financial markets infrastructure (clearinghouses)	4,587	5,496	7,216	7,997
Religious and social organizations	4,987	3,844	6,910	5,756
<b>Total commercial credit exposure by industry</b>	<b>\$ 631,195</b>	<b>\$ 635,306</b>	<b>\$ 1,040,561</b>	<b>\$ 1,062,295</b>
Net credit default protection purchased on total commitments <sup>(4)</sup>			<b>\$ (5,206)</b>	<b>\$ (3,349)</b>

<sup>(1)</sup> Includes U.S. small business commercial exposure.

<sup>(2)</sup> Includes the notional amount of unfunded legally binding lending commitments net of amounts distributed (i.e., syndicated or participated) to other financial institutions. The distributed amounts were \$10.3 billion and \$10.6 billion at September 30, 2020 and December 31, 2019.

<sup>(3)</sup> Industries are viewed from a variety of perspectives to best isolate the perceived risks. For purposes of this table, the real estate industry is defined based on the primary business activity of the borrowers or counterparties using operating cash flows and primary source of repayment as key factors.

<sup>(4)</sup> Represents net notional credit protection purchased to hedge funded and unfunded exposures for which we elected the fair value option, as well as certain other credit exposures. For more information, see Commercial Portfolio Credit Risk Management – Risk Mitigation.

## Risk Mitigation

We purchase credit protection to cover the funded portion as well as the unfunded portion of certain credit exposures. To lower the cost of obtaining our desired credit protection levels, we may add credit exposure within an industry, borrower or counterparty group by selling protection.

At September 30, 2020 and December 31, 2019, net notional credit default protection purchased in our credit derivatives portfolio to hedge our funded and unfunded exposures for which we elected the fair value option, as well as certain other credit exposures, was \$5.2 billion and \$3.3 billion. We recorded net losses on these positions of \$104 million and \$106 million for the three and nine months ended September 30, 2020 compared to net losses of \$15 million and \$93 million for the same periods in 2019. The gains and losses on these instruments were offset by gains and losses on the related exposures. The Value-at-Risk (VaR) results for these

exposures are included in the fair value option portfolio information in Table 41. For more information, see Trading Risk Management on page 46.

Tables 36 and 37 present the maturity profiles and the credit exposure debt ratings of the net credit default protection portfolio at September 30, 2020 and December 31, 2019.

**Table 36 Net Credit Default Protection by Maturity**

	September 30 2020	December 31 2019
Less than or equal to one year	50 %	54 %
Greater than one year and less than or equal to five years	48	45
Greater than five years	2	1
<b>Total net credit default protection</b>	<b>100 %</b>	<b>100 %</b>

**Table 37 Net Credit Default Protection by Credit Exposure Debt Rating**

	Net Notional <sup>(1)</sup>	Percent of Total	Net Notional <sup>(1)</sup>	Percent of Total
	September 30, 2020		December 31, 2019	
(Dollars in millions)				
<b>Ratings <sup>(2, 3)</sup></b>				
A	\$ (310)	6.0 %	\$ (697)	20.8 %
BBB	(2,699)	51.8	(1,089)	32.5
BB	(1,388)	26.7	(766)	22.9
B	(519)	10.0	(373)	11.1
CCC and below	(237)	4.6	(119)	3.6
NR <sup>(4)</sup>	(53)	0.9	(305)	9.1
<b>Total net credit default protection</b>	<b>\$ (5,206)</b>	<b>100.0 %</b>	<b>\$ (3,349)</b>	<b>100.0 %</b>

<sup>(1)</sup> Represents net credit default protection purchased.

<sup>(2)</sup> Ratings are refreshed on a quarterly basis.

<sup>(3)</sup> Ratings of BBB- or higher are considered to meet the definition of investment grade.

<sup>(4)</sup> NR is comprised of index positions held and any names that have not been rated.

For more information on credit derivatives and counterparty credit risk valuation adjustments, see *Note 3 – Derivatives* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

## Non-U.S. Portfolio

Our non-U.S. credit and trading portfolios are subject to country risk. We define country risk as the risk of loss from unfavorable economic and political conditions, currency fluctuations, social instability and changes in government policies. A risk management framework is in place to measure, monitor and manage non-U.S. risk and exposures. In addition to the direct risk of doing business in a country, we also are exposed to indirect country risks (e.g., related to the collateral received on secured financing transactions or related to client clearing activities). These indirect exposures are managed in the normal course of business through credit, market and operational risk governance, rather than through country risk governance.

Table 38 presents our 20 largest non-U.S. country exposures at September 30, 2020. These exposures accounted for 91 percent and 88 percent of our total non-U.S. exposure at September 30, 2020 and December 31, 2019. Net country exposure for these 20 countries increased \$37.9 billion in the nine months ended September 30, 2020. The majority of the increase was due to higher deposits with central banks in Germany and Japan.

**Table 38 Top 20 Non-U.S. Countries Exposure**

	Funded Loans and Loan Equivalents	Unfunded Loan Commitments	Net Counterparty Exposure	Securities/ Other Investments	Country Exposure at September 30, 2020	Hedges and Credit Default Protection	Net Country Exposure at September 30, 2020	Increase (Decrease) from December 31, 2019
(Dollars in millions)								
United Kingdom	\$ 31,825	\$ 16,188	\$ 6,197	\$ 2,836	\$ 57,046	\$ (2,015)	\$ 55,031	\$ (813)
Germany	35,523	9,366	2,389	5,353	52,631	(2,564)	50,067	19,239
Japan	20,481	1,004	1,560	2,558	25,603	(983)	24,620	14,088
France	11,340	8,436	1,308	4,942	26,026	(1,740)	24,286	8,031
Canada	8,148	9,043	1,323	2,082	20,596	(720)	19,876	(246)
Australia	6,610	3,660	454	2,893	13,617	(367)	13,250	2,148
China	9,182	41	1,126	2,343	12,692	(203)	12,489	(3,098)
Brazil	6,478	730	272	3,907	11,387	(320)	11,067	(705)
Netherlands	6,579	3,081	590	1,592	11,842	(810)	11,032	705
India	5,597	151	448	3,897	10,093	(224)	9,869	(2,148)
Switzerland	5,752	2,921	156	230	9,059	(395)	8,664	1,279
South Korea	5,486	854	459	1,824	8,623	(127)	8,496	(209)
Singapore	3,997	230	354	3,809	8,390	(57)	8,333	507
Mexico	3,920	1,225	201	1,663	7,009	(139)	6,870	(941)
Belgium	4,271	1,310	534	901	7,016	(250)	6,766	259
Hong Kong	4,723	220	512	1,167	6,622	(26)	6,596	(460)
Spain	2,926	1,343	306	789	5,364	(303)	5,061	339
Ireland	3,272	930	103	389	4,694	(11)	4,683	1,316
Italy	2,610	1,222	562	1,310	5,704	(1,065)	4,639	(738)
United Arab Emirates	2,545	139	217	52	2,953	(41)	2,912	(675)
<b>Total top 20 non-U.S. countries exposure</b>	<b>\$ 181,265</b>	<b>\$ 62,094</b>	<b>\$ 19,071</b>	<b>\$ 44,537</b>	<b>\$ 306,967</b>	<b>\$ (12,360)</b>	<b>\$ 294,607</b>	<b>\$ 37,878</b>

Our largest non-U.S. country exposure at September 30, 2020 was the U.K. with net exposure of \$55.0 billion, which represents an \$813 million decrease from December 31, 2019. Our second largest non-U.S. country exposure was Germany with net exposure of \$50.1 billion at September 30, 2020, a \$19.2 billion increase from December 31, 2019. The increase in Germany was primarily driven by an increase in deposits with the central bank.

In light of the global COVID-19 pandemic, we are monitoring our non-U.S. exposure closely, particularly in countries where restrictions on certain activities, in an attempt to contain the spread and impact of the virus, have affected and will likely

continue to adversely affect economic activity. We are managing the impact to our international business operations as part of our overall response framework and are taking actions to manage exposure carefully in impacted regions while supporting the needs of our clients. The magnitude and duration of the COVID-19 pandemic and its full impact on the global economy continue to be highly uncertain. The impact of COVID-19 could have an adverse impact on the global economy for a prolonged period of time. For more information on how the COVID-19 pandemic may affect our operations, see Executive Summary - Recent Developments – COVID-19 Pandemic on page 3 and Part II, Item 1A. Risk Factors on page 105.

## Allowance for Credit Losses

On January 1, 2020, the Corporation adopted the new accounting standard that requires the measurement of the allowance for credit losses to be based on management's best estimate of lifetime ECL inherent in the Corporation's relevant financial assets. Upon adoption of the new accounting standard, the Corporation recorded a net increase of \$3.3 billion in the allowance for credit losses which was comprised of a net increase of \$2.9 billion in the allowance for loan and lease losses and an increase of \$310 million in the reserve for unfunded lending commitments. The net increase was primarily driven by a \$3.1 billion increase related to the credit card portfolio.

The allowance for credit losses further increased by \$8.0 billion from January 1, 2020 to \$21.5 billion at September 30, 2020, which included a \$5.2 billion increase in the commercial portfolio and a \$2.8 billion increase in the consumer portfolio. The increases were driven by deterioration in the economic outlook resulting from the impact of COVID-19. Assuming the macroeconomic outlook does not deteriorate further, we do not expect to increase the level of the allowance for credit losses in the fourth quarter of 2020. The following table presents an allocation of the allowance for credit losses by product type for September 30, 2020, January 1, 2020 and December 31, 2019 (prior to the adoption of the CECL accounting standard).

**Table 39 Allocation of the Allowance for Credit Losses by Product Type**

	Amount	Percent of Total	Percent of Loans and Leases Outstanding <sup>(1)</sup>	Amount	Percent of Total	Percent of Loans and Leases Outstanding <sup>(1)</sup>	Amount	Percent of Total	Percent of Loans and Leases Outstanding <sup>(1)</sup>
(Dollars in millions)	September 30, 2020			January 1, 2020			December 31, 2019		
<b>Allowance for loan and lease losses</b>									
Residential mortgage	\$ 457	2.33 %	0.20 %	\$ 212	1.72 %	0.09 %	\$ 325	3.45 %	0.14 %
Home equity	398	2.03	1.09	228	1.84	0.57	221	2.35	0.55
Credit card	8,972	45.78	11.24	6,809	55.10	6.98	3,710	39.39	3.80
Direct/indirect consumer	800	4.08	0.89	566	4.58	0.62	234	2.49	0.26
Other consumer	64	0.34	n/m	55	0.45	n/m	52	0.55	n/m
<b>Total consumer</b>	<b>10,691</b>	<b>54.56</b>	<b>2.43</b>	<b>7,870</b>	<b>63.69</b>	<b>1.69</b>	<b>4,542</b>	<b>48.23</b>	<b>0.98</b>
U.S. commercial <sup>(2)</sup>	5,163	26.35	1.55	2,723	22.03	0.84	3,015	32.02	0.94
Non-U.S. commercial	1,353	6.90	1.41	668	5.41	0.64	658	6.99	0.63
Commercial real estate	2,283	11.65	3.66	1,036	8.38	1.65	1,042	11.07	1.66
Commercial lease financing	106	0.54	0.60	61	0.49	0.31	159	1.69	0.80
<b>Total commercial</b>	<b>8,905</b>	<b>45.44</b>	<b>1.75</b>	<b>4,488</b>	<b>36.31</b>	<b>0.88</b>	<b>4,874</b>	<b>51.77</b>	<b>0.96</b>
<b>Allowance for loan and lease losses</b>	<b>19,596</b>	<b>100.00 %</b>	<b>2.07</b>	<b>12,358</b>	<b>100.00 %</b>	<b>1.27</b>	<b>9,416</b>	<b>100.00 %</b>	<b>0.97</b>
<b>Reserve for unfunded lending commitments</b>	<b>1,910</b>			<b>1,123</b>			<b>813</b>		
<b>Allowance for credit losses</b>	<b>\$ 21,506</b>			<b>\$ 13,481</b>			<b>\$ 10,229</b>		

<sup>(1)</sup> Ratios are calculated as allowance for loan and lease losses as a percentage of loans and leases outstanding excluding loans accounted for under the fair value option. Consumer loans accounted for under the fair value option include residential mortgage loans of \$314 million at September 30, 2020 and \$257 million at January 1, 2020 and December 31, 2019 and home equity loans of \$343 million at September 30, 2020 and \$337 million at January 1, 2020 and December 31, 2019. Commercial loans accounted for under the fair value option include U.S. commercial loans of \$3.4 billion, \$5.1 billion and \$4.7 billion at September 30, 2020, January 1, 2020 and December 31, 2019, respectively and non-U.S. commercial loans of \$3.2 billion, \$3.2 billion and \$3.1 billion at September 30, 2020, January 1, 2020 and December 31, 2019, respectively.

<sup>(2)</sup> Includes allowance for loan and lease losses for U.S. small business commercial loans of \$1.5 billion, \$831 million and \$523 million at September 30, 2020, January 1, 2020 and December 31, 2019, respectively.

n/m = not meaningful

Net charge-offs for the three and nine months ended September 30, 2020 were \$972 million and \$3.2 billion compared to \$811 million and \$2.7 billion for the same periods in 2019 driven by increases in commercial losses. The provision for credit losses increased \$610 million to \$1.4 billion, and \$8.6 billion to \$11.3 billion for the three and nine months ended September 30, 2020 compared to the same periods in 2019. The allowance for credit losses included a reserve build of \$417 million for the three months ended September 30, 2020, driven by COVID-19 impacted industries, such as travel and entertainment, and a reserve build of \$8.0 billion for the nine months ended September 30, 2020 primarily due to the deterioration in the economic outlook resulting from the impact of COVID-19 on both the consumer and commercial portfolios. The provision for credit losses for the consumer portfolio, including unfunded lending commitments, decreased \$269 million to \$295 million and increased \$3.0 billion to \$5.0 billion

for the three and nine months ended September 30, 2020 compared to the same periods in 2019. The provision for credit losses for the commercial portfolio, including unfunded lending commitments, increased \$879 million to \$1.1 billion and \$5.6 billion to \$6.3 billion for the three and nine months ended September 30, 2020 compared to the same periods in 2019.

The following table presents a rollforward of the allowance for credit losses, including certain loan and allowance ratios for the nine months ended September 30, 2020 and 2019, noting that measurement of the allowance for credit losses for 2019 was based on management's estimate of probable incurred losses. For more information on the Corporation's credit loss accounting policies and activity related to the allowance for credit losses, see *Note 1 – Summary of Significant Accounting Principles* and *Note 5 – Outstanding Loans and Leases and Allowance for Credit Losses* to the Consolidated Financial Statements.

**Table 40 Allowance for Credit Losses**

(Dollars in millions)	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
<b>Allowance for loan and lease losses, beginning of period</b>	<b>\$ 19,389</b>	<b>\$ 9,527</b>	<b>\$ 12,358</b>	<b>\$ 9,601</b>
<b>Loans and leases charged off</b>				
Residential mortgage	(5)	(28)	(28)	(69)
Home equity	(8)	(171)	(47)	(386)
Credit card	(665)	(865)	(2,407)	(2,659)
Direct/Indirect consumer	(75)	(157)	(277)	(403)
Other consumer	(70)	(71)	(232)	(163)
<b>Total consumer charge-offs</b>	<b>(823)</b>	<b>(1,292)</b>	<b>(2,991)</b>	<b>(3,680)</b>
U.S. commercial <sup>(1)</sup>	(279)	(151)	(870)	(486)
Non-U.S. commercial	(57)	(66)	(91)	(115)
Commercial real estate	(106)	—	(170)	(10)
Commercial lease financing	(28)	(3)	(68)	(19)
<b>Total commercial charge-offs</b>	<b>(470)</b>	<b>(220)</b>	<b>(1,199)</b>	<b>(630)</b>
<b>Total loans and leases charged off</b>	<b>(1,293)</b>	<b>(1,512)</b>	<b>(4,190)</b>	<b>(4,310)</b>
<b>Recoveries of loans and leases previously charged off</b>				
Residential mortgage	11	66	55	120
Home equity	28	373	92	732
Credit card	156	148	463	435
Direct/Indirect consumer	57	81	193	233
Other consumer	7	2	18	12
<b>Total consumer recoveries</b>	<b>259</b>	<b>670</b>	<b>821</b>	<b>1,532</b>
U.S. commercial <sup>(2)</sup>	58	29	119	82
Non-U.S. commercial	—	(1)	1	—
Commercial real estate	—	1	1	2
Commercial lease financing	4	2	8	5
<b>Total commercial recoveries</b>	<b>62</b>	<b>31</b>	<b>129</b>	<b>89</b>
<b>Total recoveries of loans and leases previously charged off</b>	<b>321</b>	<b>701</b>	<b>950</b>	<b>1,621</b>
<b>Net charge-offs</b>	<b>(972)</b>	<b>(811)</b>	<b>(3,240)</b>	<b>(2,689)</b>
Provision for loan and lease losses	1,180	776	10,480	2,637
Other <sup>(3)</sup>	(1)	(59)	(2)	(116)
<b>Allowance for loan and lease losses, September 30</b>	<b>19,596</b>	<b>9,433</b>	<b>19,596</b>	<b>9,433</b>
<b>Reserve for unfunded lending commitments, beginning of period</b>	<b>1,702</b>	<b>806</b>	<b>1,123</b>	<b>797</b>
Provision for unfunded lending commitments	209	3	787	12
Other <sup>(3)</sup>	(1)	—	—	—
<b>Reserve for unfunded lending commitments, September 30</b>	<b>1,910</b>	<b>809</b>	<b>1,910</b>	<b>809</b>
<b>Allowance for credit losses, September 30</b>	<b>\$ 21,506</b>	<b>\$ 10,242</b>	<b>\$ 21,506</b>	<b>\$ 10,242</b>
<b>Loan and allowance ratios:</b>				
Loans and leases outstanding at September 30 <sup>(4)</sup>	<b>\$ 947,938</b>	<b>\$ 965,236</b>	<b>\$ 947,938</b>	<b>\$ 965,236</b>
Allowance for loan and lease losses as a percentage of total loans and leases outstanding at September 30 <sup>(4)</sup>	<b>2.07 %</b>	<b>0.98 %</b>	<b>2.07 %</b>	<b>0.98 %</b>
Consumer allowance for loan and lease losses as a percentage of total consumer loans and leases outstanding at September 30 <sup>(5)</sup>	<b>2.43</b>	<b>1.01</b>	<b>2.43</b>	<b>1.01</b>
Commercial allowance for loan and lease losses as a percentage of total commercial loans and leases outstanding at September 30 <sup>(6)</sup>	<b>1.75</b>	<b>0.95</b>	<b>1.75</b>	<b>0.95</b>
Average loans and leases outstanding <sup>(4)</sup>	<b>\$ 965,836</b>	<b>\$ 956,850</b>	<b>\$ 989,839</b>	<b>\$ 946,546</b>
Annualized net charge-offs as a percentage of average loans and leases outstanding <sup>(4)</sup>	<b>0.40 %</b>	<b>0.34 %</b>	<b>0.44 %</b>	<b>0.38 %</b>
Allowance for loan and lease losses as a percentage of total nonperforming loans and leases at September 30	<b>431</b>	<b>271</b>	<b>431</b>	<b>271</b>
Ratio of the allowance for loan and lease losses at September 30 to net charge-offs	<b>5.07</b>	<b>2.93</b>	<b>4.53</b>	<b>2.62</b>
Amounts included in allowance for loan and lease losses for loans and leases that are excluded from nonperforming loans and leases at September 30 <sup>(7)</sup>	<b>\$ 10,331</b>	<b>\$ 4,144</b>	<b>\$ 10,331</b>	<b>\$ 4,144</b>
Allowance for loan and lease losses as a percentage of total nonperforming loans and leases, excluding the allowance for loan and lease losses for loans and leases that are excluded from nonperforming loans and leases at September 30 <sup>(7)</sup>	<b>204 %</b>	<b>152 %</b>	<b>204 %</b>	<b>152 %</b>

<sup>(1)</sup> Includes U.S. small business commercial charge-offs of \$77 million and \$247 million for the three and nine months ended September 30, 2020 compared to \$79 million and \$239 million for the same periods in 2019.

<sup>(2)</sup> Includes U.S. small business commercial recoveries of \$10 million and \$32 million for the three and nine months ended September 30, 2020 compared to \$10 million and \$37 million for the same periods in 2019.

<sup>(3)</sup> Primarily represents write-offs of purchased credit-impaired (PCI) loans in 2019, and the net impact of portfolio sales, transfers to held for sale and transfers to foreclosed properties.

<sup>(4)</sup> Outstanding loan and lease balances and ratios do not include loans accounted for under the fair value option of \$7.2 billion and \$7.7 billion at September 30, 2020 and 2019. Average loans accounted for under the fair value option were \$8.2 billion and \$8.6 billion for the three and nine months ended September 30, 2020 compared to \$7.9 billion and \$6.6 billion for the same periods in 2019.

<sup>(5)</sup> Excludes consumer loans accounted for under the fair value option of \$657 million and \$640 million at September 30, 2020 and 2019.

<sup>(6)</sup> Excludes commercial loans accounted for under the fair value option of \$6.6 billion and \$7.0 billion at September 30, 2020 and 2019.

<sup>(7)</sup> Primarily includes amounts allocated to credit card and unsecured consumer lending portfolios in *Consumer Banking*.



## Market Risk Management

For more information on our market risk management process, see Market Risk Management in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

Market risk is the risk that changes in market conditions may adversely impact the value of assets or liabilities, or otherwise negatively impact earnings. This risk is inherent in the financial instruments associated with our operations, primarily within our *Global Markets* segment. We are also exposed to these risks in other areas of the Corporation (e.g., our ALM activities). In the event of market stress, these risks could have a material impact on our results.

We have been affected, and expect to continue to be affected, by market stress resulting from the COVID-19 pandemic that began in the first quarter of 2020. For more information on the effects of the pandemic, see Executive Summary - Recent Developments – COVID-19 Pandemic on page 3.

## Trading Risk Management

To evaluate risks in our trading activities, we focus on the actual and potential volatility of revenues generated by individual positions as well as portfolios of positions. VaR is a common statistic used to measure market risk. Our primary VaR statistic is equivalent to a 99 percent confidence level, which means that for a VaR with a one-day holding period, there should not be losses in excess of VaR, on average, 99 out of 100 trading days.

Table 41 presents the total market-based portfolio VaR which is the combination of the total covered positions (and less liquid trading positions) portfolio and the fair value option portfolio. For more information on the market risk VaR for trading activities, see Trading Risk Management in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

The total market-based portfolio VaR results in Table 41 include market risk to which we are exposed from all business segments, excluding credit valuation adjustment (CVA), DVA and related hedges. The majority of this portfolio is within the *Global Markets* segment.

Table 41 presents period-end, average, high and low daily trading VaR for the three months ended September 30, 2020, June 30, 2020 and September 30, 2019 using a 99 percent confidence level, as well as average daily trading VaR for the nine months ended September 30, 2020 and 2019. The amounts disclosed in Table 41 and Table 42 align to the view of covered positions used in the Basel 3 capital calculations. Foreign exchange and commodity positions are always considered covered positions, regardless of trading or banking treatment for the trade, except for structural foreign currency positions that are excluded with prior regulatory approval.

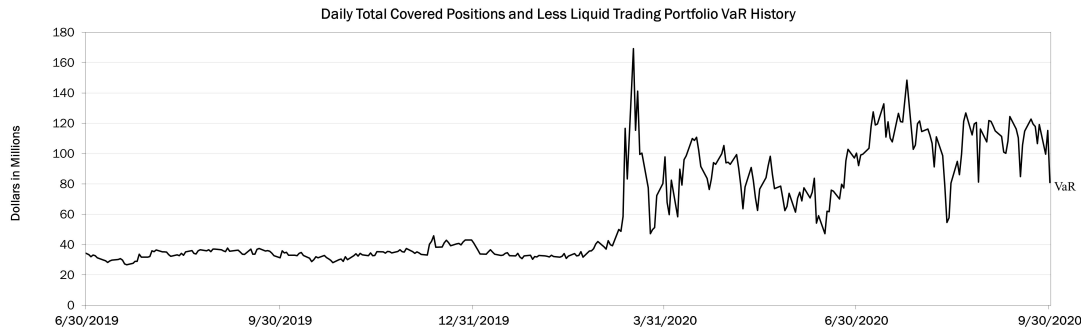
The average of total covered positions and less liquid trading positions portfolio VaR increased for the three months ended September 30, 2020 compared to the prior quarter primarily due to a decrease in portfolio diversification.

**Table 41 Market Risk VaR for Trading Activities**

	Three Months Ended												Nine Months Ended	
	September 30, 2020				June 30, 2020				September 30, 2019				September 30	
	Period End	Average	High <sup>(1)</sup>	Low <sup>(1)</sup>	Period End	Average	High <sup>(1)</sup>	Low <sup>(1)</sup>	Period End	Average	High <sup>(1)</sup>	Low <sup>(1)</sup>	2020 Average	2019 Average
(Dollars in millions)														
Foreign exchange	\$ 7	\$ 7	\$ 25	\$ 5	\$ 5	\$ 7	\$ 11	\$ 4	\$ 3	\$ 6	\$ 11	\$ 3	\$ 7	\$ 6
Interest rate	14	18	27	13	17	15	23	7	22	20	26	14	18	25
Credit	61	62	68	54	64	65	91	48	26	24	27	20	54	22
Equity	16	17	22	12	16	24	43	15	24	23	29	17	26	21
Commodities	4	6	10	4	7	7	12	5	4	6	31	4	6	6
Portfolio diversification	(71)	(56)	—	—	(39)	(60)	—	—	(50)	(48)	—	—	(58)	(48)
<b>Total covered positions portfolio</b>	<b>31</b>	<b>54</b>	<b>96</b>	<b>31</b>	<b>70</b>	<b>58</b>	<b>85</b>	<b>28</b>	<b>29</b>	<b>31</b>	<b>36</b>	<b>24</b>	<b>53</b>	<b>32</b>
Impact from less liquid exposures	50	55	—	—	30	23	—	—	2	3	—	—	26	3
<b>Total covered positions and less liquid trading positions portfolio</b>	<b>81</b>	<b>109</b>	<b>149</b>	<b>55</b>	<b>100</b>	<b>81</b>	<b>111</b>	<b>47</b>	<b>31</b>	<b>34</b>	<b>38</b>	<b>27</b>	<b>79</b>	<b>35</b>
Fair value option loans	71	62	72	54	56	67	84	55	11	11	13	9	48	9
Fair value option hedges	11	13	15	11	15	15	17	12	10	11	13	9	13	9
Fair value option portfolio diversification	(27)	(32)	—	—	(36)	(31)	—	—	(6)	(10)	—	—	(24)	(9)
<b>Total fair value option portfolio</b>	<b>55</b>	<b>43</b>	<b>58</b>	<b>34</b>	<b>35</b>	<b>51</b>	<b>86</b>	<b>34</b>	<b>15</b>	<b>12</b>	<b>16</b>	<b>9</b>	<b>37</b>	<b>9</b>
Portfolio diversification	(10)	(18)	—	—	(16)	(12)	—	—	(12)	(9)	—	—	(14)	(6)
<b>Total market-based portfolio</b>	<b>\$ 126</b>	<b>\$ 134</b>	<b>160</b>	<b>99</b>	<b>\$ 119</b>	<b>\$ 120</b>	<b>159</b>	<b>76</b>	<b>\$ 34</b>	<b>\$ 37</b>	<b>44</b>	<b>28</b>	<b>\$ 102</b>	<b>\$ 38</b>

<sup>(1)</sup> The high and low for each portfolio may have occurred on different trading days than the high and low for the components. Therefore the impact from less liquid exposures and the amount of portfolio diversification, which is the difference between the total portfolio and the sum of the individual components, is not relevant.

The graph below presents the daily covered positions and less liquid trading positions portfolio VaR for the previous five quarters, corresponding to the data in Table 41. Peak VaR in mid-March 2020 was driven by increased market realized volatility and higher implied volatilities.



Additional VaR statistics produced within our single VaR model are provided in Table 42 at the same level of detail as in Table 41. Evaluating VaR with additional statistics allows for an increased understanding of the risks in the portfolio as the historical market data used in the VaR calculation does not necessarily follow a predefined statistical distribution. Table 42 presents average trading VaR statistics at 99 percent and 95

percent confidence levels for the three months ended September 30, 2020, June 30, 2020 and September 30, 2019. The increase in VaR for the 99 percent confidence level for the three months ended September 30, 2020 was primarily due to COVID-19 related market volatility, which impacted the 99 percent VaR average more severely than the 95 percent VaR average.

**Table 42** Average Market Risk VaR for Trading Activities – 99 percent and 95 percent VaR Statistics

	Three Months Ended					
	September 30, 2020		June 30, 2020		September 30, 2019	
	99 percent	95 percent	99 percent	95 percent	99 percent	95 percent
(Dollars in millions)						
Foreign exchange	\$ 7	\$ 4	\$ 7	\$ 4	\$ 6	\$ 4
Interest rate	18	8	15	6	20	13
Credit	62	18	65	18	24	16
Equity	17	9	24	12	23	12
Commodities	6	3	7	4	6	3
Portfolio diversification	(56)	(25)	(60)	(25)	(48)	(31)
<b>Total covered positions portfolio</b>	<b>54</b>	<b>17</b>	<b>58</b>	<b>19</b>	<b>31</b>	<b>17</b>
Impact from less liquid exposures	55	5	23	2	3	2
<b>Total covered positions and less liquid trading positions portfolio</b>	<b>109</b>	<b>22</b>	<b>81</b>	<b>21</b>	<b>34</b>	<b>19</b>
Fair value option loans	62	14	67	15	11	6
Fair value option hedges	13	6	15	8	11	7
Fair value option portfolio diversification	(32)	(7)	(31)	(12)	(10)	(7)
<b>Total fair value option portfolio</b>	<b>43</b>	<b>13</b>	<b>51</b>	<b>11</b>	<b>12</b>	<b>6</b>
Portfolio diversification	(18)	(7)	(12)	(7)	(9)	(4)
<b>Total market-based portfolio</b>	<b>\$ 134</b>	<b>\$ 28</b>	<b>\$ 120</b>	<b>\$ 25</b>	<b>\$ 37</b>	<b>\$ 21</b>

## Backtesting

The accuracy of the VaR methodology is evaluated by backtesting, which compares the daily VaR results, utilizing a one-day holding period, against a comparable subset of trading revenue. For more information on our backtesting process, see Trading Risk Management – Backtesting in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

During the three months ended September 30, 2020, there were no days where this subset of trading revenue had losses that exceeded our total covered portfolio VaR, utilizing a one-day holding period. During the nine months ended September 30, 2020, seven days with losses exceeded total covered portfolio VaR.

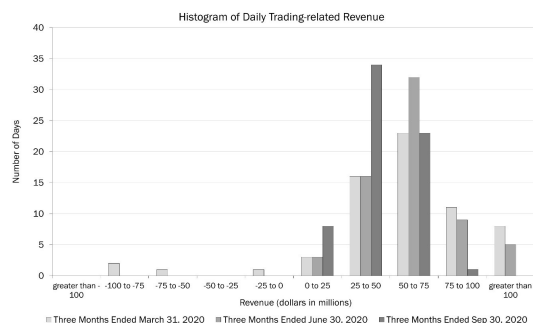
## Total Trading-related Revenue

Total trading-related revenue, excluding brokerage fees, and CVA, DVA and funding valuation adjustment gains (losses), represents the total amount earned from trading positions,

including market-based net interest income, which are taken in a diverse range of financial instruments and markets. For more information, see Trading Risk Management – Total Trading-related Revenue in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

The following histogram is a graphic depiction of trading volatility and illustrates the daily level of trading-related revenue for the three months ended September 30, 2020 compared to the three months ended June 30, 2020 and March 31, 2020. During the three months ended September 30, 2020, positive trading-related revenue was recorded for 100 percent of the trading days, of which 88 percent were daily trading gains of over \$25 million. This compares to the three months ended June 30, 2020 where positive trading-related revenue was recorded for 100 percent of the trading days, of which 95 percent were daily trading gains of over \$25 million. During the three months ended March 31, 2020, positive trading-related

revenue was recorded for 94 percent of the trading days, of which 89 percent were daily trading gains of over \$25 million.



## Trading Portfolio Stress Testing

Because the very nature of a VaR model suggests results can exceed our estimates and it is dependent on a limited historical window, we also stress test our portfolio using scenario analysis. This analysis estimates the change in the value of our trading portfolio that may result from abnormal market movements. For more information, see Trading Risk Management – Trading Portfolio Stress Testing in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

## Interest Rate Risk Management for the Banking Book

The following discussion presents net interest income for banking book activities. For more information, see Interest Rate Risk Management for the Banking Book in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

Table 43 presents the spot and 12-month forward rates used in our baseline forecasts at September 30, 2020 and December 31, 2019.

**Table 43 Forward Rates**

	September 30, 2020		
	Federal Funds	Three-month LIBOR	10-Year Swap
Spot rates	0.25 %	0.23 %	0.71 %
12-month forward rates	0.25	0.19	0.81
	December 31, 2019		
	Federal Funds	Three-month LIBOR	10-Year Swap
Spot rates	1.75 %	1.91 %	1.90 %
12-month forward rates	1.50	1.62	1.92

Table 44 shows the pretax impact to forecasted net interest income over the next 12 months from September 30, 2020 and December 31, 2019 resulting from instantaneous parallel and non-parallel shocks to the market-based forward curve. Periodically we evaluate the scenarios presented so that they are meaningful in the context of the current rate environment. The interest rate scenarios also assume U.S. dollar rates are floored at zero.

In the nine months ended September 30, 2020, the asset sensitivity of our balance sheet increased in both up-rate and down-rate scenarios primarily due to higher deposit balances. We continue to be asset sensitive to a parallel upward move in interest rates with the majority of that impact coming from the short end of the yield curve. Additionally, higher interest rates impact the fair value of debt securities and, accordingly, for debt

securities classified as AFS, may adversely affect OCI and thus capital levels under the Basel 3 capital rules. Under instantaneous upward parallel shifts, the near-term adverse impact to Basel 3 capital is reduced over time by offsetting positive impacts to net interest income. For more information on Basel 3, see Capital Management – Regulatory Capital on page 24.

**Table 44 Estimated Banking Book Net Interest Income Sensitivity to Curve Changes**

(Dollars in millions)	Short Rate (bps)	Long Rate (bps)	September 30, 2020	December 31 2019
<b>Parallel Shifts</b>				
+100 bps instantaneous shift	+100	+100	\$ 9,600	\$ 4,190
-25 bps instantaneous shift	-25	-25	(2,516)	(1,500)
<b>Flatteners</b>				
Short-end instantaneous change	+100	—	6,357	2,641
Long-end instantaneous change	—	-25	(1,322)	(653)
<b>Steepeners</b>				
Short-end instantaneous change	-25	—	(1,198)	(844)
Long-end instantaneous change	—	+100	3,341	1,561

The sensitivity analysis in Table 44 assumes that we take no action in response to these rate shocks and does not assume any change in other macroeconomic variables normally correlated with changes in interest rates. As part of our ALM activities, we use securities, certain residential mortgages, and interest rate and foreign exchange derivatives in managing interest rate sensitivity.

The behavior of our deposits portfolio in the baseline forecast and in alternate interest rate scenarios is a key assumption in our projected estimates of net interest income. The sensitivity analysis in Table 44 assumes no change in deposit portfolio size or mix from the baseline forecast in alternate rate environments. In higher rate scenarios, any customer activity resulting in the replacement of low-cost or noninterest-bearing deposits with higher yielding deposits or market-based funding would reduce our benefit in those scenarios.

## Interest Rate and Foreign Exchange Derivative Contracts

Interest rate and foreign exchange derivative contracts are utilized in our ALM activities and serve as an efficient tool to manage our interest rate and foreign exchange risk. We use derivatives to hedge the variability in cash flows or changes in fair value on our balance sheet due to interest rate and foreign exchange components. For more information on our hedging activities, see Note 3 – Derivatives to the Consolidated Financial Statements. For more information on interest rate contracts and risk management, see Interest Rate Risk Management for the Banking Book in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

We use interest rate derivative instruments to hedge the variability in the cash flows of our assets and liabilities and other forecasted transactions (collectively referred to as cash flow hedges). The net results on both open and terminated cash flow hedge derivative instruments recorded in accumulated OCI

were a gain of \$557 million and a loss of \$496 million, on a pretax basis, at September 30, 2020 and December 31, 2019. These gains and losses are expected to be reclassified into earnings in the same period as the hedged cash flows affect earnings and will decrease income or increase expense on the respective hedged cash flows. Assuming no change in open cash flow derivative hedge positions and no changes in prices or interest rates beyond what is implied in forward yield curves at September 30, 2020, the after-tax net gains are expected to be reclassified into earnings as follows: a gain of \$191 million within the next year, a gain of \$352 million in years two through five, a loss of \$79 million in years six through ten, with the remaining loss of \$56 million thereafter. For more information on derivatives designated as cash flow hedges, see *Note 3 – Derivatives* to the Consolidated Financial Statements.

We hedge our net investment in non-U.S. operations determined to have functional currencies other than the U.S.

dollar using forward foreign exchange contracts that typically settle in less than 180 days, cross-currency basis swaps and foreign exchange options. We recorded net after-tax losses on derivatives in accumulated OCI associated with net investment hedges which were offset by gains on our net investments in consolidated non-U.S. entities at September 30, 2020.

Table 45 presents derivatives utilized in our ALM activities and shows the notional amount, fair value, weighted-average receive-fixed and pay-fixed rates, expected maturity and average estimated durations of our open ALM derivatives at September 30, 2020 and December 31, 2019. These amounts do not include derivative hedges on our MSRs. During the nine months ended September 30, 2020, the fair value of receive-fixed interest rate swaps increased while pay-fixed interest swaps decreased, primarily driven by lower swap rates on hedges of U.S. dollar long-term debt.

**Table 45 Asset and Liability Management Interest Rate and Foreign Exchange Contracts**

	September 30, 2020									
	Expected Maturity									
(Dollars in millions, average estimated duration in years)	Fair Value	Total	Remainder of 2020	2021	2022	2023	2024	Thereafter	Average Estimated Duration	
Receive-fixed interest rate swaps <sup>(1)</sup>	\$ 24,685								7.78	
Notional amount		\$ 282,994	\$ 4,650	\$ 14,644	\$ 27,058	\$ 46,960	\$ 31,747	\$ 157,935		
Weighted-average fixed-rate		1.90 %	2.79 %	3.17 %	2.01 %	1.82 %	1.42 %	1.85 %		
Pay-fixed interest rate swaps <sup>(1)</sup>	(11,446)								6.66	
Notional amount		\$ 271,616	\$ 4,344	\$ 12,269	\$ 15,258	\$ 36,919	\$ 30,411	\$ 172,415		
Weighted-average fixed-rate		1.05 %	2.16 %	0.62 %	0.34 %	1.21 %	1.04 %	1.09 %		
Same-currency basis swaps <sup>(2)</sup>	(199)									
Notional amount		\$ 209,569	\$ 3,381	\$ 18,537	\$ 6,796	\$ 3,518	\$ 22,737	\$ 154,600		
Foreign exchange basis swaps <sup>(1, 3, 4)</sup>	(1,251)									
Notional amount		108,512	1,485	26,538	15,637	7,890	3,555	53,407		
Foreign exchange contracts <sup>(1, 4, 5)</sup>	1,841									
Notional amount <sup>(6)</sup>		(102,072)	(128,059)	1,989	2,721	2,402	4,546	14,329		
Futures and forward rate contracts	115									
Notional amount		48,375	48,375							
Option products	—									
Notional amount		16	—	—	—	16	—	—		
Net ALM contracts	\$ 13,745									

	December 31, 2019									
	Expected Maturity									
(Dollars in millions, average estimated duration in years)	Fair Value	Total	2020	2021	2022	2023	2024	Thereafter	Average Estimated Duration	
Receive-fixed interest rate swaps <sup>(1)</sup>	\$ 12,370								6.47	
Notional amount		\$ 215,123	\$ 16,347	\$ 14,642	\$ 21,616	\$ 36,356	\$ 21,257	\$ 104,905		
Weighted-average fixed-rate		2.68 %	2.68 %	3.17 %	2.48 %	2.36 %	2.55 %	2.79 %		
Pay-fixed interest rate swaps <sup>(1)</sup>	(2,669)								6.99	
Notional amount		\$ 69,586	\$ 4,344	\$ 2,117	\$ —	\$ 13,993	\$ 8,194	\$ 40,938		
Weighted-average fixed-rate		2.36 %	2.16 %	2.15 %	— %	2.52 %	2.26 %	2.35 %		
Same-currency basis swaps <sup>(2)</sup>	(290)									
Notional amount		\$ 152,160	\$ 18,857	\$ 18,590	\$ 4,306	\$ 2,017	\$ 14,567	\$ 93,823		
Foreign exchange basis swaps <sup>(1, 3, 4)</sup>	(1,258)									
Notional amount		113,529	23,639	24,215	14,611	7,111	3,521	40,432		
Foreign exchange contracts <sup>(1, 4, 5)</sup>	414									
Notional amount <sup>(6)</sup>		(53,106)	(79,315)	4,539	2,674	2,340	4,432	12,224		
Option products	—									
Notional amount		15	—	—	—	15	—	—		
Net ALM contracts	\$ 8,567									

<sup>(1)</sup> Does not include basis adjustments on either fixed-rate debt issued by the Corporation or AFS debt securities, which are hedged using derivatives designated as fair value hedging instruments, that substantially offset the fair values of these derivatives.

<sup>(2)</sup> At September 30, 2020 and December 31, 2019, the notional amount of same-currency basis swaps included \$209.6 billion and \$152.2 billion in both foreign currency and U.S. dollar-denominated basis swaps in which both sides of the swap are in the same currency.

<sup>(3)</sup> Foreign exchange basis swaps consisted of cross-currency variable interest rate swaps used separately or in conjunction with receive-fixed interest rate swaps.

<sup>(4)</sup> Does not include foreign currency translation adjustments on certain non-U.S. debt issued by the Corporation that substantially offset the fair values of these derivatives.

<sup>(5)</sup> The notional amount of foreign exchange contracts of \$(102.1) billion at September 30, 2020 was comprised of \$33.7 billion in foreign currency-denominated and cross-currency receive-fixed swaps, \$(131.9) billion in net foreign currency forward rate contracts, \$(4.3) billion in foreign currency-denominated interest rate swaps and \$462 million in net foreign currency futures contracts. Foreign exchange contracts of \$(53.1) billion at December 31, 2019 were comprised of \$29.0 billion in foreign currency-denominated and cross-currency receive-fixed swaps, \$(82.4) billion in net foreign currency forward rate contracts, \$(313) million in foreign currency-denominated interest rate swaps and \$644 million in foreign currency futures contracts.

<sup>(6)</sup> Reflects the net of long and short positions. Amounts shown as negative reflect a net short position.

## **Mortgage Banking Risk Management**

We originate, fund and service mortgage loans, which subject us to credit, liquidity and interest rate risks, among others. We determine whether loans will be held for investment or held for sale at the time of commitment and manage credit and liquidity risks by selling or securitizing a portion of the loans we originate.

Changes in interest rates impact the value of interest rate lock commitments (IRLCs) and the related residential first mortgage LHFS, as well as the value of the MSRs. Because the interest rate risks of these hedged items offset, we combine them into one overall hedged item with one combined economic hedge portfolio consisting of derivative contracts and securities. For more information on IRLCs and the related residential mortgage LHFS, see Mortgage Banking Risk Management in the MD&A of the Corporation's 2019 Annual Report on Form 10-K.

During the three and nine months ended September 30, 2020 and 2019, we recorded gains of \$85 million and \$313 million related to the change in fair value of the MSRs, IRLCs and LHFS, net of gains and losses on the hedge portfolio, compared to gains of \$78 million and \$217 million for the same periods in 2019.

## **Complex Accounting Estimates**

Our significant accounting principles are essential in understanding the MD&A. Many of our significant accounting principles require complex judgments to estimate the values of assets and liabilities. We have procedures and processes in place to facilitate making these judgments. For more information, see Complex Accounting Estimates in the MD&A of the Corporation's 2019 Annual Report on Form 10-K and *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K. Except as noted below under Allowance for Credit Losses, there have not been any material updates to our complex accounting estimates as disclosed in the MD&A of the Corporation's Annual Report on Form 10-K.

## **Allowance for Credit Losses**

On January 1, 2020, the Corporation adopted the new accounting standard that requires the measurement of the allowance for credit losses, which includes the allowance for loan and lease losses and the reserve for unfunded lending commitments, to be based on management's best estimate of lifetime ECL inherent in the Corporation's relevant financial assets.

The Corporation's estimate of lifetime ECL includes the use of quantitative models that incorporate forward-looking

macroeconomic scenarios that are applied over the contractual life of the loan portfolios, adjusted for expected prepayments and borrower-controlled extension options. These macroeconomic scenarios include variables that have historically been key drivers of increases and decreases in credit losses. These variables include, but are not limited to, unemployment rates, real estate prices, gross domestic product levels, corporate bond spreads and long-term interest rate forecasts. As any one economic outlook is inherently uncertain, the Corporation leverages multiple scenarios. The scenarios that are chosen each quarter and the amount of weighting given to each scenario depend on a variety of factors including recent economic events, leading economic indicators, views of internal and third-party economists and industry trends.

The Corporation also includes qualitative reserves to cover losses that are expected but, in the Corporation's assessment, may not be adequately represented in the economic assumptions described above. For example, factors that the Corporation considers include changes in lending policies and procedures, business conditions, the nature and size of the portfolio, portfolio concentrations, the volume and severity of past due loans and nonaccrual loans, the effect of external factors such as competition and legal and regulatory requirements, among others. Further, the Corporation considers the inherent uncertainty in quantitative models that are built on historical data.

The allowance for credit losses can also be impacted by unanticipated changes in asset quality of the portfolio, such as increases in risk rating downgrades in our commercial portfolio, deterioration in borrower delinquencies or credit scores in our credit card portfolio or increases in LTVs in our consumer real estate portfolio. In addition, while we have incorporated our estimated impact of COVID-19 into our allowance for credit losses, the ultimate impact of the pandemic is still unknown, including how long economic activities will be impacted and what effect the unprecedented levels of government fiscal and monetary actions will have on the economy and our credit losses.

As described above, the process to determine the allowance for credit losses requires numerous estimates and assumptions, some of which require a high degree of judgment and are often interrelated. Changes in the estimates and assumptions can result in significant changes in the allowance for credit losses. Our process for determining the allowance for credit losses is further discussed in *Note 1 – Summary of Significant Accounting Principles* and *Note 5 – Outstanding Loans and Leases and Allowance for Credit Losses* to the Consolidated Financial Statements.

## Non-GAAP Reconciliations

Table 46 provides reconciliations of certain non-GAAP financial measures to the most closely related GAAP financial measures.

**Table 46** Period-end and Average Supplemental Financial Data and Reconciliations to GAAP Financial Measures <sup>(1)</sup>

(Dollars in millions)	Period-end		Average			
	September 30	December 31	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019	2020	2019
Shareholders' equity	\$ 268,850	\$ 264,810	\$ 267,323	\$ 270,430	\$ 266,062	\$ 268,223
Goodwill	(68,951)	(68,951)	(68,951)	(68,951)	(68,951)	(68,951)
Intangible assets (excluding MSRs)	(2,185)	(1,661)	(1,976)	(1,707)	(1,758)	(1,735)
Related deferred tax liabilities	910	713	855	752	791	787
<b>Tangible shareholders' equity</b>	<b>\$ 198,624</b>	<b>\$ 194,911</b>	<b>\$ 197,251</b>	<b>\$ 200,524</b>	<b>\$ 196,144</b>	<b>\$ 198,324</b>
Preferred stock	(23,427)	(23,401)	(23,427)	(23,800)	(23,437)	(22,894)
<b>Tangible common shareholders' equity</b>	<b>\$ 175,197</b>	<b>\$ 171,510</b>	<b>\$ 173,824</b>	<b>\$ 176,724</b>	<b>\$ 172,707</b>	<b>\$ 175,430</b>
Total assets	\$ 2,738,452	\$ 2,434,079				
Goodwill	(68,951)	(68,951)				
Intangible assets (excluding MSRs)	(2,185)	(1,661)				
Related deferred tax liabilities	910	713				
<b>Tangible assets</b>	<b>\$ 2,668,226</b>	<b>\$ 2,364,180</b>				

<sup>(1)</sup> Presents reconciliations of non-GAAP financial measures to the most closely related GAAP financial measures. For more information on non-GAAP financial measures and ratios we use in assessing the results of the Corporation, see Supplemental Financial Data on page 8.

### Item 3. Quantitative and Qualitative Disclosures about Market Risk

See Market Risk Management on page 46 in the MD&A and the sections referenced therein for Quantitative and Qualitative Disclosures about Market Risk.

### Item 4. Controls and Procedures

#### Disclosure Controls and Procedures

As of the end of the period covered by this report, the Corporation's management, including the Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness and design of the Corporation's disclosure controls and procedures (as that term is defined in Rule 13a-15(e) of the Exchange Act). Based upon that evaluation, the Corporation's Chief Executive Officer and Chief Financial Officer concluded that the Corporation's disclosure controls and procedures were effective, as of the end of the period covered by this report.

#### Changes in Internal Control Over Financial Reporting

There have been no changes in the Corporation's internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) during the three months ended September 30, 2020, that have materially affected, or are reasonably likely to materially affect, the Corporation's internal control over financial reporting.

**Part I. Financial Information**  
**Item 1. Financial Statements**  
**Bank of America Corporation and Subsidiaries**

**Consolidated Statement of Income**

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(In millions, except per share information)				
<b>Net interest income</b>				
Interest income	\$ 11,486	\$ 17,916	\$ 40,124	\$ 54,310
Interest expense	1,357	5,729	7,017	17,559
Net interest income	10,129	12,187	33,107	36,751
<b>Noninterest income</b>				
Fees and commissions	8,777	8,467	25,490	24,495
Market making and similar activities	1,689	2,118	6,983	7,267
Other income	(259)	35	(151)	382
Total noninterest income	10,207	10,620	32,322	32,144
<b>Total revenue, net of interest expense</b>	<b>20,336</b>	<b>22,807</b>	<b>65,429</b>	<b>68,895</b>
<b>Provision for credit losses</b>	<b>1,389</b>	<b>779</b>	<b>11,267</b>	<b>2,649</b>
<b>Noninterest expense</b>				
Compensation and benefits	8,200	7,779	24,535	24,000
Occupancy and equipment	1,798	1,663	5,302	4,908
Information processing and communications	1,333	1,163	3,807	3,484
Product delivery and transaction related	930	696	2,518	2,067
Marketing	308	440	1,238	1,410
Professional fees	450	386	1,206	1,155
Other general operating	1,382	3,042	2,680	4,637
Total noninterest expense	14,401	15,169	41,286	41,661
<b>Income before income taxes</b>	<b>4,546</b>	<b>6,859</b>	<b>12,876</b>	<b>24,585</b>
<b>Income tax expense</b>	<b>(335)</b>	<b>1,082</b>	<b>452</b>	<b>4,149</b>
<b>Net income</b>	<b>\$ 4,881</b>	<b>\$ 5,777</b>	<b>\$ 12,424</b>	<b>\$ 20,436</b>
<b>Preferred stock dividends</b>	<b>441</b>	<b>505</b>	<b>1,159</b>	<b>1,186</b>
<b>Net income applicable to common shareholders</b>	<b>\$ 4,440</b>	<b>\$ 5,272</b>	<b>\$ 11,265</b>	<b>\$ 19,250</b>
<b>Per common share information</b>				
Earnings	\$ 0.51	\$ 0.57	\$ 1.29	\$ 2.02
Diluted earnings	0.51	0.56	1.28	2.01
<b>Average common shares issued and outstanding</b>	<b>8,732.9</b>	<b>9,303.6</b>	<b>8,762.6</b>	<b>9,516.2</b>
<b>Average diluted common shares issued and outstanding</b>	<b>8,777.5</b>	<b>9,353.0</b>	<b>8,800.5</b>	<b>9,565.7</b>

**Consolidated Statement of Comprehensive Income**

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
<b>Net income</b>	<b>\$ 4,881</b>	<b>\$ 5,777</b>	<b>\$ 12,424</b>	<b>\$ 20,436</b>
<b>Other comprehensive income (loss), net-of-tax:</b>				
Net change in debt securities	101	1,538	4,794	6,231
Net change in debt valuation adjustments	(58)	229	(5)	(272)
Net change in derivatives	76	118	808	651
Employee benefit plan adjustments	44	26	144	83
Net change in foreign currency translation adjustments	21	(51)	(86)	(99)
<b>Other comprehensive income (loss)</b>	<b>184</b>	<b>1,860</b>	<b>5,655</b>	<b>6,594</b>
<b>Comprehensive income</b>	<b>\$ 5,065</b>	<b>\$ 7,637</b>	<b>\$ 18,079</b>	<b>\$ 27,030</b>

See accompanying Notes to Consolidated Financial Statements.



## Bank of America Corporation and Subsidiaries

### Consolidated Balance Sheet

(Dollars in millions)	September 30 2020	December 31 2019
<b>Assets</b>		
Cash and due from banks	\$ 32,922	\$ 30,152
Interest-bearing deposits with the Federal Reserve, non-U.S. central banks and other banks	268,084	131,408
Cash and cash equivalents	301,006	161,560
Time deposits placed and other short-term investments	5,088	7,107
Federal funds sold and securities borrowed or purchased under agreements to resell (includes \$103,101 and \$50,364 measured at fair value)	326,745	274,597
Trading account assets (includes \$110,698 and \$90,946 pledged as collateral)	255,500	229,826
Derivative assets	44,297	40,485
Debt securities:		
Carried at fair value	245,997	256,467
Held-to-maturity, at cost (fair value – \$347,917 and \$219,821)	338,400	215,730
Total debt securities	584,397	472,197
Loans and leases (includes \$7,234 and \$8,335 measured at fair value)	955,172	983,426
Allowance for loan and lease losses	(19,596)	(9,416)
Loans and leases, net of allowance	935,576	974,010
Premises and equipment, net	10,902	10,561
Goodwill	68,951	68,951
Loans held-for-sale (includes \$1,905 and \$3,709 measured at fair value)	4,434	9,158
Customer and other receivables	61,684	55,937
Other assets (includes \$12,725 and \$15,518 measured at fair value)	139,872	129,690
<b>Total assets</b>	<b>\$ 2,738,452</b>	<b>\$ 2,434,079</b>
<b>Liabilities</b>		
Deposits in U.S. offices:		
Noninterest-bearing	\$ 616,925	\$ 403,305
Interest-bearing (includes \$626 and \$508 measured at fair value)	996,804	940,731
Deposits in non-U.S. offices:		
Noninterest-bearing	15,158	13,719
Interest-bearing	73,993	77,048
Total deposits	1,702,880	1,434,803
Federal funds purchased and securities loaned or sold under agreements to repurchase (includes \$132,322 and \$16,008 measured at fair value)	190,769	165,109
Trading account liabilities	84,681	83,270
Derivative liabilities	41,728	38,229
Short-term borrowings (includes \$4,577 and \$3,941 measured at fair value)	17,861	24,204
Accrued expenses and other liabilities (includes \$12,765 and \$15,434 measured at fair value and \$1,910 and \$813 of reserve for unfunded lending commitments)	175,960	182,798
Long-term debt (includes \$30,455 and \$34,975 measured at fair value)	255,723	240,856
<b>Total liabilities</b>	<b>2,469,602</b>	<b>2,169,269</b>
Commitments and contingencies (Note 6 – Securitizations and Other Variable Interest Entities and Note 10 – Commitments and Contingencies)		
<b>Shareholders' equity</b>		
Preferred stock, \$0.01 par value; authorized – 100,000,000 shares; issued and outstanding – 3,887,440 and 3,887,440 shares	23,427	23,401
Common stock and additional paid-in capital, \$0.01 par value; authorized – 12,800,000,000 shares; issued and outstanding – 8,661,522,562 and 8,836,148,954 shares	85,954	91,723
Retained earnings	160,447	156,319
Accumulated other comprehensive income (loss)	(978)	(6,633)
<b>Total shareholders' equity</b>	<b>268,850</b>	<b>264,810</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$ 2,738,452</b>	<b>\$ 2,434,079</b>
<b>Assets of consolidated variable interest entities included in total assets above (isolated to settle the liabilities of the variable interest entities)</b>		
Trading account assets	\$ 4,492	\$ 5,811
Loans and leases	24,094	38,837
Allowance for loan and lease losses	(1,812)	(807)
Loans and leases, net of allowance	22,282	38,030
All other assets	191	540
<b>Total assets of consolidated variable interest entities</b>	<b>\$ 26,965</b>	<b>\$ 44,381</b>
<b>Liabilities of consolidated variable interest entities included in total liabilities above</b>		
Short-term borrowings (includes \$25 and \$0 of non-recourse short-term borrowings)	\$ 739	\$ 2,175
Long-term debt (includes \$5,742 and \$8,717 of non-recourse debt)	5,742	8,718
All other liabilities (includes \$19 and \$19 of non-recourse liabilities)	19	22
<b>Total liabilities of consolidated variable interest entities</b>	<b>\$ 6,500</b>	<b>\$ 10,915</b>

See accompanying Notes to Consolidated Financial Statements.

## Bank of America Corporation and Subsidiaries

### Consolidated Statement of Changes in Shareholders' Equity

(In millions)	Preferred Stock	Common Stock and Additional Paid-in Capital		Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total Shareholders' Equity
		Shares	Amount			
<b>Balance, June 30, 2020</b>	\$ 23,427	8,664.1	\$ 85,794	\$ 157,578	\$ (1,162)	\$ 265,637
Net income				4,881		4,881
Net change in debt securities					101	101
Net change in debit valuation adjustments					(58)	(58)
Net change in derivatives					76	76
Employee benefit plan adjustments					44	44
Net change in foreign currency translation adjustments					21	21
Dividends declared:						
Common				(1,571)		(1,571)
Preferred				(441)		(441)
Common stock issued under employee plans, net, and other		1.8	274			274
Common stock repurchased		(4.4)	(114)			(114)
<b>Balance, September 30, 2020</b>	\$ 23,427	8,661.5	\$ 85,954	\$ 160,447	\$ (978)	\$ 268,850
<b>Balance, December 31, 2019</b>	\$ 23,401	8,836.1	\$ 91,723	\$ 156,319	\$ (6,633)	\$ 264,810
Cumulative adjustment for adoption of credit loss accounting standard				(2,406)		(2,406)
Net income				12,424		12,424
Net change in debt securities					4,794	4,794
Net change in debit valuation adjustments					(5)	(5)
Net change in derivatives					808	808
Employee benefit plan adjustments					144	144
Net change in foreign currency translation adjustments					(86)	(86)
Dividends declared:						
Common				(4,722)		(4,722)
Preferred				(1,159)		(1,159)
Issuance of preferred stock	1,098					1,098
Redemption of preferred stock	(1,072)					(1,072)
Common stock issued under employee plans, net, and other		41.6	993	(9)		984
Common stock repurchased		(216.2)	(6,762)			(6,762)
<b>Balance, September 30, 2019</b>	\$ 23,427	8,661.5	\$ 85,954	\$ 160,447	\$ (978)	\$ 268,850
<b>Balance, June 30, 2019</b>	\$ 24,689	9,342.6	\$ 106,619	\$ 147,577	\$ (7,477)	\$ 271,408
Net income				5,777		5,777
Net change in debt securities					1,538	1,538
Net change in debit valuation adjustments					229	229
Net change in derivatives					118	118
Employee benefit plan adjustments					26	26
Net change in foreign currency translation adjustments					(51)	(51)
Dividends declared:						
Common				(1,659)		(1,659)
Preferred				(505)		(505)
Issuance of preferred stock	1,280					1,280
Redemption of preferred stock	(2,363)					(2,363)
Common stock issued under employee plans, net, and other		4.3	222	(7)		215
Common stock repurchased		(267.6)	(7,626)			(7,626)
<b>Balance, September 30, 2019</b>	\$ 23,606	9,079.3	\$ 99,215	\$ 151,183	\$ (5,617)	\$ 268,387
<b>Balance, December 31, 2018</b>	\$ 22,326	9,669.3	\$ 118,896	\$ 136,314	\$ (12,211)	\$ 265,325
Cumulative adjustment for adoption of lease accounting standard				165		165
Net income				20,436		20,436
Net change in debt securities					6,231	6,231
Net change in debit valuation adjustments					(272)	(272)
Net change in derivatives					651	651
Employee benefit plan adjustments					83	83
Net change in foreign currency translation adjustments					(99)	(99)
Dividends declared:						
Common				(4,535)		(4,535)
Preferred				(1,186)		(1,186)
Issuance of preferred stock	3,643					3,643
Redemption of preferred stock	(2,363)					(2,363)
Common stock issued under employee plans, net, and other		123.4	715	(11)		704
Common stock repurchased		(713.4)	(20,396)			(20,396)
<b>Balance, September 30, 2019</b>	\$ 23,606	9,079.3	\$ 99,215	\$ 151,183	\$ (5,617)	\$ 268,387

See accompanying Notes to Consolidated Financial Statements.



## Bank of America Corporation and Subsidiaries

### Consolidated Statement of Cash Flows

	Nine Months Ended September 30	
	2020	2019
(Dollars in millions)		
<b>Operating activities</b>		
Net income	\$ 12,424	\$ 20,436
Adjustments to reconcile net income to net cash provided by operating activities:		
Provision for credit losses	11,267	2,649
Gains on sales of debt securities	(379)	(116)
Depreciation and amortization	1,356	1,290
Net amortization of premium/discount on debt securities	2,636	1,419
Deferred income taxes	(1,994)	1,789
Stock-based compensation	1,597	1,495
Impairment of equity method investment	—	2,072
Loans held-for-sale:		
Originations and purchases	(11,093)	(18,732)
Proceeds from sales and paydowns of loans originally classified as held for sale and instruments from related securitization activities	15,654	19,350
Net change in:		
Trading and derivative assets/liabilities	(25,503)	(30,541)
Other assets	(15,078)	613
Accrued expenses and other liabilities	(9,495)	(4,053)
Other operating activities, net	2,007	5,003
Net cash provided by (used in) operating activities	(16,601)	2,674
<b>Investing activities</b>		
Net change in:		
Time deposits placed and other short-term investments	2,019	(63)
Federal funds sold and securities borrowed or purchased under agreements to resell	(52,148)	(10,464)
Debt securities carried at fair value:		
Proceeds from sales	61,485	43,845
Proceeds from paydowns and maturities	61,973	57,868
Purchases	(148,905)	(110,658)
Held-to-maturity debt securities:		
Proceeds from paydowns and maturities	63,097	22,832
Purchases	(126,710)	(9,825)
Loans and leases:		
Proceeds from sales of loans originally classified as held for investment and instruments from related securitization activities	10,041	9,757
Purchases	(3,972)	(4,016)
Other changes in loans and leases, net	11,810	(34,439)
Other investing activities, net	(2,473)	(2,188)
Net cash used in investing activities	(123,783)	(37,351)
<b>Financing activities</b>		
Net change in:		
Deposits	268,077	11,360
Federal funds purchased and securities loaned or sold under agreements to repurchase	25,660	15,079
Short-term borrowings	(6,353)	10,493
Long-term debt:		
Proceeds from issuance	40,858	45,149
Retirement	(37,123)	(42,842)
Preferred stock:		
Proceeds from issuance	1,098	3,643
Redemption	(1,072)	(2,363)
Common stock repurchased	(6,762)	(20,396)
Cash dividends paid	(5,899)	(4,086)
Other financing activities, net	(603)	(794)
Net cash provided by financing activities	277,881	15,243
Effect of exchange rate changes on cash and cash equivalents	1,949	(876)
Net increase (decrease) in cash and cash equivalents	139,446	(20,310)
Cash and cash equivalents at January 1	161,560	177,404
<b>Cash and cash equivalents at September 30</b>	<b>\$ 301,006</b>	<b>\$ 157,094</b>

See accompanying Notes to Consolidated Financial Statements.

## Bank of America Corporation and Subsidiaries

### Notes to Consolidated Financial Statements

#### NOTE 1 Summary of Significant Accounting Principles

Bank of America Corporation, a bank holding company and a financial holding company, provides a diverse range of financial services and products throughout the U.S. and in certain international markets. The term "the Corporation" as used herein may refer to Bank of America Corporation, individually, Bank of America Corporation and its subsidiaries, or certain of Bank of America Corporation's subsidiaries or affiliates.

#### Principles of Consolidation and Basis of Presentation

The Consolidated Financial Statements include the accounts of the Corporation and its majority-owned subsidiaries and those variable interest entities (VIEs) where the Corporation is the primary beneficiary. Intercompany accounts and transactions have been eliminated. Results of operations of acquired companies are included from the dates of acquisition, and for VIEs, from the dates that the Corporation became the primary beneficiary. Assets held in an agency or fiduciary capacity are not included in the Consolidated Financial Statements. The Corporation accounts for investments in companies for which it owns a voting interest and for which it has the ability to exercise significant influence over operating and financing decisions using the equity method of accounting. These investments are included in other assets. Equity method investments are subject to impairment testing, and the Corporation's proportionate share of income or loss is included in other income.

The preparation of the Consolidated Financial Statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect reported amounts and disclosures. Actual results could materially differ from those estimates and assumptions.

These unaudited Consolidated Financial Statements should be read in conjunction with the audited Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

The nature of the Corporation's business is such that the results of any interim period are not necessarily indicative of results for a full year. In the opinion of management, all adjustments, which consist of normal recurring adjustments necessary for a fair statement of the interim period results, have been made. The Corporation evaluates subsequent events through the date of filing with the Securities and Exchange Commission. Certain prior-period amounts have been reclassified to conform to current period presentation.

#### New Accounting Standards

##### Reference Rate Reform

In March 2020, the FASB issued a new accounting standard related to contracts or hedging relationships that reference LIBOR or other reference rates that are expected to be discontinued due to reference rate reform. The new standard provides for optional expedients and other guidance regarding the accounting related to modifications of contracts, hedging relationships and other transactions affected by reference rate reform. The Corporation has elected to retrospectively adopt the new standard as of January 1, 2020 which resulted in no immediate impact. While reference rate reform is not expected to have a material accounting impact on the Corporation's

consolidated financial position or results of operations, the standard will ease the administrative burden in accounting for the future effects of reference rate reform.

##### Accounting for Financial Instruments -- Credit Losses

On January 1, 2020, the Corporation adopted the new accounting standard that requires the measurement of the allowance for credit losses to be based on management's best estimate of lifetime expected credit losses (ECL) inherent in the Corporation's relevant financial assets. Upon adoption of the standard on January 1, 2020, the Corporation recorded a \$3.3 billion, or 32 percent, increase to the allowance for credit losses. After adjusting for deferred taxes and other adoption effects, a \$2.4 billion decrease was recorded in retained earnings through a cumulative-effect adjustment.

##### Accounting Principles for Credit Losses

The following summarizes the Corporation's accounting policies for certain credit loss activities.

##### Allowance for Credit Losses

The allowance for credit losses includes both the allowance for loan and lease losses and the reserve for unfunded lending commitments and represents management's estimate of the ECL in the Corporation's loan and lease portfolio, excluding loans and unfunded lending commitments accounted for under the fair value option. The ECL on funded consumer and commercial loans and leases is referred to as the allowance for loan and lease losses and is reported separately as a contra-asset to loans and leases on the Consolidated Balance Sheet. The ECL for unfunded lending commitments, including home equity lines of credit (HELOCs), standby letters of credit (SBLCs) and binding unfunded loan commitments is reported on the Consolidated Balance Sheet in accrued expenses and other liabilities. The provision for credit losses related to the loan and lease portfolio and unfunded lending commitments is reported in the Consolidated Statement of Income.

For loans and leases, the ECL is typically estimated using quantitative methods that consider a variety of factors such as historical loss experience, the current credit quality of the portfolio as well as an economic outlook over the life of the loan. The life of the loan for closed-ended products is based on the contractual maturity of the loan adjusted for any expected prepayments. The contractual maturity includes any extension options that are at the sole discretion of the borrower. For open-ended products (e.g., lines of credit), the ECL is determined based on the maximum repayment term associated with future draws from credit lines unless those lines of credit are unconditionally cancellable (e.g., credit cards) in which case the Corporation does not record any allowance.

In its loss forecasting framework, the Corporation incorporates forward-looking information through the use of macroeconomic scenarios applied over the forecasted life of the assets. These macroeconomic scenarios include variables that have historically been key drivers of increases and decreases in credit losses. These variables include, but are not limited to, unemployment rates, real estate prices, gross domestic product levels, corporate bond spreads and long-term interest rate forecasts. As any one economic outlook is inherently uncertain, the Corporation leverages multiple scenarios. The scenarios that are chosen each quarter and the amount of weighting given to each scenario depend on a variety of factors including recent economic events, leading economic indicators, views of internal as well as third-party economists and industry trends.

The estimate of credit losses includes expected recoveries of amounts previously charged off (i.e., negative allowance). If a loan has been charged off, the expected cash flows on the loan are not limited by the current amortized cost balance. Instead, expected cash flows can be assumed up to the unpaid principal balance immediately prior to the charge-off.

The allowance for loan and lease losses for troubled debt restructurings (TDR) is measured based on the present value of projected future lifetime principal and interest cash flows discounted at the loan's original effective interest rate, or in cases where foreclosure is probable or the loan is collateral dependent, at the loan's collateral value or its observable market price, if available. The measurement of ECL for the renegotiated consumer credit card TDR portfolio is based on the present value of projected cash flows discounted using the average TDR portfolio contractual interest rate, excluding promotionally priced loans, in effect prior to restructuring. Projected cash flows for TDRs use the same economic outlook as discussed above. For purposes of computing this specific loss component of the allowance, larger impaired loans are evaluated individually and smaller impaired loans are evaluated as a pool.

Also included in the allowance for loan and lease losses are qualitative reserves to cover losses that are expected but, in the Corporation's assessment, may not be adequately represented in the quantitative methods or the economic assumptions described above. For example, factors that the Corporation considers include changes in lending policies and procedures, business conditions, the nature and size of the portfolio, portfolio concentrations, the volume and severity of past due loans and nonaccrual loans, the effect of external factors such as competition, and legal and regulatory requirements, among others. Further, the Corporation considers the inherent uncertainty in quantitative models that are built on historical data.

With the exception of the Corporation's credit card portfolio, the Corporation does not include reserves for interest receivable in the measurement of the allowance for credit losses as the Corporation generally classifies consumer loans as nonperforming at 90 days past due and reverses interest income for these loans at that time. For credit card loans, the Corporation reserves for interest and fees as part of the allowance for loan and lease losses. Upon charge-off of a credit card loan, the Corporation reverses the interest and fee income against the income statement line item where it was originally recorded.

The Corporation has identified the following three portfolio segments and measures the allowance for credit losses using the following methods.

#### **Consumer Real Estate**

To estimate ECL for consumer loans secured by residential real estate, the Corporation estimates the number of loans that will default over the life of the existing portfolio, after factoring in estimated prepayments, using quantitative modeling methodologies. The attributes that are most significant in estimating the Corporation's ECL include refreshed loan-to-value (LTV) or, in the case of a subordinated lien, refreshed combined LTV (CLTV), borrower credit score, months since origination and geography, all of which are further broken down by present collection status (whether the loan is current, delinquent, in default, or in bankruptcy). The estimates are based on the Corporation's historical experience with the loan portfolio,

adjusted to reflect the economic outlook. The outlook on the unemployment rate and consumer real estate prices are key factors that impact the frequency and severity of loss estimates. The Corporation does not reserve for credit losses on the unpaid principal balance of loans insured by the Federal Housing Administration (FHA) and long-term standby loans, as these loans are fully insured. The Corporation records a reserve for unfunded lending commitments for the ECL associated with the undrawn portion of the Corporation's HELOCs, which can only be canceled by the Corporation if certain criteria are met. The ECL associated with these unfunded lending commitments is calculated using the same models and methodologies noted above and incorporate utilization assumptions at time of default.

For loans that are more than 180 days past due and collateral-dependent TDRs, the Corporation bases the allowance on the estimated fair value of the underlying collateral as of the reporting date less costs to sell. The fair value of the collateral securing these loans is generally determined using an automated valuation model (AVM) that estimates the value of a property by reference to market data including sales of comparable properties and price trends specific to the Metropolitan Statistical Area in which the property being valued is located. In the event that an AVM value is not available, the Corporation utilizes publicized indices or if these methods provide less reliable valuations, the Corporation uses appraisals or broker price opinions to estimate the fair value of the collateral. While there is inherent imprecision in these valuations, the Corporation believes that they are representative of this portfolio in the aggregate.

For loans that are more than 180 days past due and collateral-dependent TDRs, with the exception of the Corporation's fully insured portfolio, the outstanding balance of loans that is in excess of the estimated property value after adjusting for costs to sell is charged off. If the estimated property value decreases in periods subsequent to the initial charge-off, the Corporation will record an additional charge-off; however, if the value increases in periods subsequent to the charge-off, the Corporation will adjust the allowance to account for the increase but not to a level above the cumulative charge-off amount.

#### **Credit Cards and Other Consumer**

Credit cards are revolving lines of credit without a defined maturity date. The estimated life of a credit card receivable is determined by estimating the amount and timing of expected future payments (e.g., borrowers making full payments, minimum payments or somewhere in between) that it will take for a receivable balance to pay off. The ECL on the future payments incorporates the spending behavior of a borrower through time using key borrower-specific factors and the economic outlook described above. The Corporation applies all expected payments in accordance with the Credit Card Accountability Responsibility and Disclosure Act of 2009 (i.e., paying down the highest interest rate bucket first). Then forecasted future payments are prioritized to pay off the oldest balance until it is brought to zero or an expected charge-off amount. Unemployment rate outlook, borrower credit score, delinquency status and historical payment behavior are all key inputs into the credit card receivable loss forecasting model. Future draws on the credit card lines are excluded from the ECL as they are unconditionally cancellable.

The ECL for the consumer vehicle lending portfolio is also determined using quantitative methods supplemented with qualitative analysis. The quantitative model estimates ECL giving consideration to key borrower and loan characteristics such as delinquency status, borrower credit score, LTV ratio, underlying collateral type and collateral value.

#### **Commercial**

The ECL on commercial loans is forecasted using models that estimate credit losses over the loan's contractual life at an individual loan level. The models use the contractual terms to forecast future principal cash flows while also considering expected prepayments. For open-ended commitments such as revolving lines of credit, changes in funded balance are captured by forecasting a borrower's draw and payment behavior over the remaining life of the commitment. For loans collateralized with commercial real estate and for which the underlying asset is the primary source of repayment, the loss forecasting models consider key loan and customer attributes such as LTV ratio, net operating income and debt service coverage, and captures variations in behavior according to property type and region. The commercial real estate model also utilizes key economic variables to forecast market indicators such as rent levels and vacancy rates, which impact the ECL estimate. For all other commercial loans and leases, the loss forecasting model determines the probabilities of transition to different credit risk ratings or default at each point over the life of the asset based on the borrower's current credit risk rating, industry sector, size of the exposure and the geographic market. The severity of loss is determined based on the type of collateral securing the exposure, the size of the exposure, the borrower's industry sector, any guarantors and the geographic market. Assumptions of expected loss are conditioned to the economic outlook and the model considers key economic variables such as unemployment rate, gross domestic product, credit risk spreads, asset prices and equity market returns.

In addition to the allowance for loan and lease losses, the Corporation also estimates ECL related to unfunded lending commitments such as letters of credit, financial guarantees, unfunded bankers acceptances and binding loan commitments, excluding commitments accounted for under the fair value option. Reserves are estimated for the unfunded exposure using the same models and methodologies as the funded exposure and are reported as reserves for unfunded lending commitments.

#### **Securities**

The Corporation evaluates each available-for-sale (AFS) security where the value has declined below amortized cost. If the Corporation intends to sell or believes it is more likely than not that it will be required to sell the debt security, it is written down to fair value through earnings. For AFS debt securities the Corporation intends to hold, the Corporation evaluates the debt securities for ECL except for debt securities that are guaranteed by the U.S. Treasury, U.S. government agencies or sovereign entities of high credit quality where the Corporation applies a zero credit loss assumption. For the remaining AFS debt securities, the Corporation considers qualitative parameters such as internal and external credit ratings and the value of underlying collateral. If an AFS debt security fails any of the qualitative parameters, a discounted cash flow analysis is used by the Corporation to determine if a portion of the unrealized loss is a result of a credit loss. Any credit losses determined are recognized as an increase to the allowance for credit losses through provision expense recorded in other income. Cash flows

expected to be collected are estimated using all relevant information available such as, remaining payment terms, prepayment speeds, the financial condition of the issuer, expected defaults and the value of the underlying collateral. If any of the decline in fair value is related to market factors, that amount is recognized in accumulated other comprehensive income (OCI). In certain instances, the credit loss may exceed the total decline in fair value, in which case, the allowance recorded is limited to the difference between the amortized cost and the fair value of the asset.

The Corporation separately evaluates its held-to-maturity (HTM) debt securities for any credit losses, of which substantially all qualify for the zero loss assumption. For the remaining securities, the Corporation performs a discounted cash flow analysis to estimate any credit losses which are then recognized as part of the allowance for credit losses.

#### **Other Assets**

For the Corporation's financial assets that are measured at amortized cost and are not included in debt securities or loans and leases on the Consolidated Balance Sheet, the Corporation evaluates these assets for ECL using various techniques. For assets that are subject to collateral maintenance provisions, including federal funds sold and securities borrowed or purchased under agreements to resell, where the collateral consists of daily margining of liquid and marketable assets where the margining is expected to be maintained into the foreseeable future, the expected losses are assumed to be zero. For all other assets, the Corporation performs qualitative analyses, including consideration of historical losses and current economic conditions, to estimate any ECL which are then included in a valuation account that is recorded as a contra-asset against the amortized cost basis of the financial asset.

#### **Troubled Debt Restructurings**

The Corporation has implemented various consumer and commercial loan modification programs to provide its borrowers relief from the economic impacts of the COVID-19 pandemic. In accordance with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Corporation has elected to not apply TDR classification to any COVID-19 related loan modifications that were performed after March 1, 2020 to borrowers who were current as of December 31, 2019. Accordingly, these restructurings are not classified as TDRs. In addition, for loans modified in response to the COVID-19 pandemic that do not meet the above criteria (e.g., current payment status at December 31, 2019), the Corporation is applying the guidance included in an interagency statement issued by the bank regulatory agencies. This guidance states that loan modifications performed in light of the COVID-19 pandemic, including loan payment deferrals that are up to six months in duration, that were granted to borrowers who were current as of the implementation date of a loan modification program or modifications granted under government mandated modification programs, are not TDRs. For loan modifications that include a payment deferral and are not TDRs, the borrowers' past due and nonaccrual status have not been impacted during the deferral period. The Corporation has continued to accrue interest during the deferral period using a constant effective yield method. For most mortgage, HELOC and commercial loan modifications, the contractual interest that accrued during the deferral period is payable at the maturity of the loan. The Corporation includes these amounts with the unpaid principal balance when computing its allowance for credit losses. Amounts that are subsequently deemed uncollectible



are written off against the allowance for credit losses. For more information on the Corporation's TDR accounting, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

## Paycheck Protection Program

The Corporation is participating in the Paycheck Protection Program (PPP), which is a loan program that originated from the CARES Act and was subsequently expanded by the Paycheck Protection Program and Health Care Enhancement Act. The PPP is designed to provide U.S. small businesses with cash-flow assistance through loans fully guaranteed by the Small Business Administration (SBA). If the borrower meets certain criteria and uses the proceeds towards certain eligible expenses, the borrower's obligation to repay the loan can be forgiven up to the full principal amount of the loan and any accrued interest. Upon borrower forgiveness, the SBA pays the Corporation for the principal and accrued interest owed on the loan. If the full principal of the loan is not forgiven, the loan will operate according to the original loan terms with the 100 percent SBA guaranty remaining. As of September 30, 2020,

the Corporation had approximately 343,000 PPP loans with outstanding balances totaling \$24.7 billion. As compensation for originating the loans, the Corporation received lender processing fees from the SBA, which are capitalized, along with the loan origination costs, and will be amortized over the loans' contractual lives and recognized as interest income. Upon forgiveness of a loan and repayment by the SBA, any unrecognized net capitalized fees and costs related to the loan will be recognized as interest income in that period.

## NOTE 2 Net Interest Income and Noninterest Income

The table below presents the Corporation's net interest income and noninterest income disaggregated by revenue source for the three and nine months ended September 30, 2020 and 2019. For more information, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K. For a disaggregation of noninterest income by business segment and *All Other*, see *Note 17 – Business Segment Information*.

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
<b>Net interest income</b>				
<b>Interest income</b>				
Loans and leases	\$ 7,894	\$ 10,894	\$ 26,426	\$ 32,721
Debt securities	2,130	2,829	7,413	8,965
Federal funds sold and securities borrowed or purchased under agreements to resell	55	1,242	900	3,746
Trading account assets	948	1,319	3,203	3,962
Other interest income	459	1,632	2,182	4,916
Total interest income	11,486	17,916	40,124	54,310
<b>Interest expense</b>				
Deposits	227	1,880	1,784	5,640
Short-term borrowings	(24)	1,876	1,024	5,725
Trading account liabilities	212	303	764	967
Long-term debt	942	1,670	3,445	5,227
Total interest expense	1,357	5,729	7,017	17,559
Net interest income	\$ 10,129	\$ 12,187	\$ 33,107	\$ 36,751
<b>Noninterest income</b>				
<b>Fees and commissions</b>				
<b>Card income</b>				
Interchange fees <sup>(1)</sup>	\$ 1,172	\$ 963	\$ 2,794	\$ 2,827
Other card income	396	502	1,295	1,459
Total card income	1,568	1,465	4,089	4,286
<b>Service charges</b>				
Deposit-related fees	1,515	1,690	4,441	4,908
Lending-related fees	302	285	841	809
Total service charges	1,817	1,975	5,282	5,717
<b>Investment and brokerage services</b>				
Asset management fees	2,740	2,597	7,905	7,591
Brokerage fees	883	897	2,898	2,733
Total investment and brokerage services	3,623	3,494	10,803	10,324
<b>Investment banking fees</b>				
Underwriting income	1,239	740	3,610	2,198
Syndication fees	133	341	634	887
Financial advisory services	397	452	1,072	1,083
Total investment banking fees	1,769	1,533	5,316	4,168
<b>Total fees and commissions</b>	<b>8,777</b>	<b>8,467</b>	<b>25,490</b>	<b>24,495</b>
<b>Market making and similar activities</b>	<b>1,689</b>	<b>2,118</b>	<b>6,983</b>	<b>7,267</b>
<b>Other income</b>	<b>(259)</b>	<b>35</b>	<b>(151)</b>	<b>382</b>
<b>Total noninterest income</b>	<b>\$ 10,207</b>	<b>\$ 10,620</b>	<b>\$ 32,322</b>	<b>\$ 32,144</b>

<sup>(1)</sup> Gross interchange fees were \$2.4 billion and \$2.6 billion for the three months ended September 30, 2020 and 2019 and are presented net of \$ .4 billion and \$1.6 billion of expenses for rewards and partner payments as well as certain other card costs. Gross interchange fees were \$6.7 billion and \$7.4 billion for the nine months ended September 30, 2020 and 2019 and are presented net of \$ .1 billion and \$ .6 billion of expenses for rewards and partner payments as well as certain other card costs for the same periods.

## NOTE 3 Derivatives

### Derivative Balances

Derivatives are entered into on behalf of customers, for trading or to support risk management activities. Derivatives used in risk management activities include derivatives that may or may not be designated in qualifying hedge accounting relationships. Derivatives that are not designated in qualifying hedge accounting relationships are referred to as other risk management derivatives. For more information on the Corporation's derivatives and hedging activities, see *Note 1* –

*Summary of Significant Accounting Principles* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K. The following tables present derivative instruments included on the Consolidated Balance Sheet in derivative assets and liabilities at September 30, 2020 and December 31, 2019. Balances are presented on a gross basis, prior to the application of counterparty and cash collateral netting. Total derivative assets and liabilities are adjusted on an aggregate basis to take into consideration the effects of legally enforceable master netting agreements and have been reduced by cash collateral received or paid.

	September 30, 2020							
	Gross Derivative Assets				Gross Derivative Liabilities			
	Contract/ Notional <sup>(1)</sup>	Trading and Other Risk Management Derivatives	Qualifying Accounting Hedges	Total	Trading and Other Risk Management Derivatives	Qualifying Accounting Hedges	Total	
(Dollars in billions)								
<b>Interest rate contracts</b>								
Swaps	\$ 16,869.8	\$ 203.8	\$ 13.0	\$ 216.8	\$ 214.9	\$ 0.9	\$ 215.8	
Futures and forwards	5,599.2	2.0	0.1	2.1	1.9	—	1.9	
Written options	1,599.1	—	—	—	44.8	—	44.8	
Purchased options	1,573.0	51.2	—	51.2	—	—	—	
<b>Foreign exchange contracts</b>								
Swaps	1,471.8	30.9	0.4	31.3	34.8	0.6	35.4	
Spot, futures and forwards	4,278.5	35.9	0.2	36.1	36.0	0.1	36.1	
Written options	297.6	—	—	—	4.4	—	4.4	
Purchased options	294.7	4.6	—	4.6	—	—	—	
<b>Equity contracts</b>								
Swaps	291.2	12.0	—	12.0	12.5	—	12.5	
Futures and forwards	109.3	0.7	—	0.7	0.7	—	0.7	
Written options	650.3	—	—	—	44.5	—	44.5	
Purchased options	586.8	46.6	—	46.6	—	—	—	
<b>Commodity contracts</b>								
Swaps	36.7	2.9	—	2.9	4.1	—	4.1	
Futures and forwards	62.2	2.2	—	2.2	1.0	—	1.0	
Written options	29.5	—	—	—	2.3	—	2.3	
Purchased options	29.6	2.1	—	2.1	—	—	—	
<b>Credit derivatives <sup>(2)</sup></b>								
Purchased credit derivatives:								
Credit default swaps	398.7	4.3	—	4.3	4.3	—	4.3	
Total return swaps/options	92.1	0.5	—	0.5	1.1	—	1.1	
Written credit derivatives:								
Credit default swaps	386.8	4.2	—	4.2	3.6	—	3.6	
Total return swaps/options	83.2	0.5	—	0.5	0.6	—	0.6	
Gross derivative assets/liabilities		\$ 404.4	\$ 13.7	\$ 418.1	\$ 411.5	\$ 1.6	\$ 413.1	
Less: Legally enforceable master netting agreements				(332.5)			(332.5)	
Less: Cash collateral received/paid				(41.3)			(38.9)	
<b>Total derivative assets/liabilities</b>				\$ 44.3			\$ 41.7	

<sup>(1)</sup> Represents the total contract/notional amount of derivative assets and liabilities outstanding.

<sup>(2)</sup> The net derivative asset (liability) and notional amount of written credit derivatives for which the Corporation held purchased credit derivatives with identical underlying referenced names were \$17 million and \$332.6 billion at September 30, 2020.

	December 31, 2019						
	Gross Derivative Assets				Gross Derivative Liabilities		
	Contract/ Notional <sup>(1)</sup>	Trading and Other Risk Management Derivatives	Qualifying Accounting Hedges	Total	Trading and Other Risk Management Derivatives	Qualifying Accounting Hedges	Total
(Dollars in billions)							
<b>Interest rate contracts</b>							
Swaps	\$ 15,074.4	\$ 162.0	\$ 9.7	\$ 171.7	\$ 168.5	\$ 0.4	\$ 168.9
Futures and forwards	3,279.8	1.0	—	1.0	1.0	—	1.0
Written options	1,767.7	—	—	—	32.5	—	32.5
Purchased options	1,673.6	37.4	—	37.4	—	—	—
<b>Foreign exchange contracts</b>							
Swaps	1,657.7	30.3	0.7	31.0	31.7	0.9	32.6
Spot, futures and forwards	3,792.7	35.9	0.1	36.0	38.7	0.3	39.0
Written options	274.3	—	—	—	3.8	—	3.8
Purchased options	261.6	4.0	—	4.0	—	—	—
<b>Equity contracts</b>							
Swaps	315.0	6.5	—	6.5	8.1	—	8.1
Futures and forwards	125.1	0.3	—	0.3	1.1	—	1.1
Written options	731.1	—	—	—	34.6	—	34.6
Purchased options	668.6	42.4	—	42.4	—	—	—
<b>Commodity contracts</b>							
Swaps	42.0	2.1	—	2.1	4.4	—	4.4
Futures and forwards	61.3	1.7	—	1.7	0.4	—	0.4
Written options	33.2	—	—	—	1.4	—	1.4
Purchased options	37.9	1.4	—	1.4	—	—	—
<b>Credit derivatives <sup>(2)</sup></b>							
Purchased credit derivatives:							
Credit default swaps	321.6	2.7	—	2.7	5.6	—	5.6
Total return swaps/options	86.6	0.4	—	0.4	1.3	—	1.3
Written credit derivatives:							
Credit default swaps	300.2	5.4	—	5.4	2.0	—	2.0
Total return swaps/options	86.2	0.8	—	0.8	0.4	—	0.4
Gross derivative assets/liabilities		\$ 334.3	\$ 10.5	\$ 344.8	\$ 335.5	\$ 1.6	\$ 337.1
Less: Legally enforceable master netting agreements				(270.4)			(270.4)
Less: Cash collateral received/paid				(33.9)			(28.5)
<b>Total derivative assets/liabilities</b>				\$ 40.5			\$ 38.2

<sup>(1)</sup> Represents the total contract/notional amount of derivative assets and liabilities outstanding.

<sup>(2)</sup> The net derivative asset (liability) and notional amount of written credit derivatives for which the Corporation held purchased credit derivatives with identical underlying referenced names were \$28 billion and \$309.7 billion at December 31, 2019.

## Offsetting of Derivatives

The Corporation enters into International Swaps and Derivatives Association, Inc. (ISDA) master netting agreements or similar agreements with substantially all of the Corporation's derivative counterparties. For more information, see *Note 3 – Derivatives* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

The following table presents derivative instruments included in derivative assets and liabilities on the Consolidated Balance Sheet at September 30, 2020 and December 31, 2019 by primary risk (e.g., interest rate risk) and the platform, where

applicable, on which these derivatives are transacted. Balances are presented on a gross basis, prior to the application of counterparty and cash collateral netting. Total gross derivative assets and liabilities are adjusted on an aggregate basis to take into consideration the effects of legally enforceable master netting agreements which include reducing the balance for counterparty netting and cash collateral received or paid.

For more information on offsetting of securities financing agreements, see *Note 9 – Federal Funds Sold or Purchased, Securities Financing Agreements, Short-term Borrowings and Restricted Cash*.

## Offsetting of Derivatives <sup>(1)</sup>

	Derivative Assets		Derivative Liabilities		Derivative Assets		Derivative Liabilities	
	September 30, 2020		September 30, 2020		December 31, 2019		December 31, 2019	
(Dollars in billions)								
<b>Interest rate contracts</b>								
Over-the-counter	\$	260.6	\$	253.1	\$	203.1	\$	196.6
Exchange-traded		0.1		0.1		0.1		0.1
Over-the-counter cleared		9.5		8.7		6.0		5.3
<b>Foreign exchange contracts</b>								
Over-the-counter		69.3		73.5		69.2		73.1
Over-the-counter cleared		1.1		1.0		0.5		0.5
<b>Equity contracts</b>								
Over-the-counter		26.0		22.3		21.3		17.8
Exchange-traded		31.9		32.2		26.4		22.8
<b>Commodity contracts</b>								
Over-the-counter		5.0		5.3		2.8		4.2
Exchange-traded		1.0		1.1		0.8		0.8
Over-the-counter cleared		—		—		—		0.1
<b>Credit derivatives</b>								
Over-the-counter		6.8		7.1		6.4		6.6
Over-the-counter cleared		2.6		2.3		2.5		2.2
<b>Total gross derivative assets/liabilities, before netting</b>								
Over-the-counter		367.7		361.3		302.8		298.3
Exchange-traded		33.0		33.4		27.3		23.7
Over-the-counter cleared		13.2		12.0		9.0		8.1
Less: Legally enforceable master netting agreements and cash collateral received/paid								
Over-the-counter		(332.6)		(330.8)		(274.7)		(269.3)
Exchange-traded		(28.9)		(28.9)		(21.5)		(21.5)
Over-the-counter cleared		(12.3)		(11.7)		(8.1)		(8.1)
<b>Derivative assets/liabilities, after netting</b>		40.1		35.3		34.8		31.2
<b>Other gross derivative assets/liabilities <sup>(2)</sup></b>		4.2		6.4		5.7		7.0
<b>Total derivative assets/liabilities</b>		44.3		41.7		40.5		38.2
Less: Financial instruments collateral <sup>(3)</sup>		(15.8)		(16.4)		(14.6)		(16.1)
<b>Total net derivative assets/liabilities</b>	\$	28.5	\$	25.3	\$	25.9	\$	22.1

<sup>(1)</sup> Over-the-counter derivatives include bilateral transactions between the Corporation and a particular counterparty. Over-the-counter-cleared derivatives include bilateral transactions between the Corporation and a counterparty where the transaction is cleared through a clearinghouse. Exchange-traded derivatives include listed options transacted on an exchange.

<sup>(2)</sup> Consists of derivatives entered into under master netting agreements where the enforceability of these agreements is uncertain under bankruptcy laws in some countries or industries.

<sup>(3)</sup> Amounts are limited to the derivative asset/liability balance and, accordingly, do not include excess collateral received/pledged. Financial instruments collateral includes securities collateral received or pledged and cash securities held and posted at third-party custodians that are not offset on the Consolidated Balance Sheet but shown as a reduction to derive net derivative assets and liabilities.

## ALM and Risk Management Derivatives

The Corporation's asset and liability management (ALM) and risk management activities include the use of derivatives to mitigate risk to the Corporation including derivatives designated in qualifying hedge accounting relationships and derivatives used in other risk management activities. For more information on ALM and risk management derivatives, see *Note 3 – Derivatives* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

## Derivatives Designated as Accounting Hedges

The Corporation uses various types of interest rate and foreign exchange derivative contracts to protect against changes in the fair value of its assets and liabilities due to fluctuations in

interest rates and exchange rates (fair value hedges). The Corporation also uses these types of contracts to protect against changes in the cash flows of its assets and liabilities, and other forecasted transactions (cash flow hedges). The Corporation hedges its net investment in consolidated non-U.S. operations determined to have functional currencies other than the U.S. dollar using forward exchange contracts and cross-currency basis swaps, and by issuing foreign currency-denominated debt (net investment hedges).

### Fair Value Hedges

The following table summarizes information related to fair value hedges for the three and nine months ended September 30, 2020 and 2019.

## Gains and Losses on Derivatives Designated as Fair Value Hedges

(Dollars in millions)

	Three Months Ended September 30, 2020		Three Months Ended September 30, 2019	
	Derivative	Hedged Item	Derivative	Hedged Item
Interest rate risk on long-term debt <sup>(1)</sup>	\$ (1,523)	\$ 1,473	\$ 3,328	\$ (3,342)
Interest rate and foreign currency risk on long-term debt <sup>(2)</sup>	79	(87)	(110)	111
Interest rate risk on available-for-sale securities <sup>(3)</sup>	139	(139)	(33)	30
<b>Total</b>	<b>\$ (1,305)</b>	<b>\$ 1,247</b>	<b>\$ 3,185</b>	<b>\$ (3,201)</b>

	Nine Months Ended September 30, 2020		Nine Months Ended September 30, 2019	
	Derivative	Hedged Item	Derivative	Hedged Item
Interest rate risk on long-term debt <sup>(1)</sup>	\$ 9,286	\$ (9,403)	\$ 9,373	\$ (9,392)
Interest rate and foreign currency risk on long-term debt <sup>(2)</sup>	644	(638)	(12)	31
Interest rate risk on available-for-sale securities <sup>(3)</sup>	(572)	559	(133)	128
<b>Total</b>	<b>\$ 9,358</b>	<b>\$ (9,482)</b>	<b>\$ 9,228</b>	<b>\$ (9,233)</b>

<sup>(1)</sup> Amounts are recorded in interest expense in the Consolidated Statement of Income.

<sup>(2)</sup> For the three and nine months ended September 30, 2020, the derivative amount includes gains (losses) of \$(3) million and \$718 million in interest expense, \$95 million and \$(83) million in market making and similar activities, and \$(6) million and \$9 million in accumulated OCI. For the same periods in 2019, the derivative amount includes gains (losses) of \$(59) million and \$108 million in interest expense, \$(53) million and \$(142) million in market making and similar activities, and \$2 million and \$22 million in accumulated OCI. Line item totals are in the Consolidated Statement of Income and on the Consolidated Balance Sheet.

<sup>(3)</sup> Amounts are recorded in interest income in the Consolidated Statement of Income.

The table below summarizes the carrying value of hedged assets and liabilities that are designated and qualifying in fair value hedging relationships along with the cumulative amount of fair value hedging adjustments included in the carrying value that have been recorded in the current hedging relationships. These fair value hedging adjustments are open basis adjustments that are not subject to amortization as long as the hedging relationship remains designated.

## Designated Fair Value Hedged Assets (Liabilities)

(Dollars in millions)

	September 30, 2020		December 31, 2019	
	Carrying Value	Cumulative Fair Value Adjustments <sup>(1)</sup>	Carrying Value	Cumulative Fair Value Adjustments <sup>(1)</sup>
Long-term debt <sup>(2)</sup>	\$ (126,852)	\$ (12,071)	\$ (162,389)	\$ (8,685)
Available-for-sale debt securities <sup>(2, 3, 4)</sup>	102,474	566	1,654	64

<sup>(1)</sup> For assets, increase (decrease) to carrying value and for liabilities, (increase) decrease to carrying value.

<sup>(2)</sup> At September 30, 2020, the cumulative fair value adjustments remaining on long-term debt and AFS debt securities from discontinued hedging relationships resulted in an increase in the related liability of \$3 billion and a decrease in the related asset of \$6 million compared to a decrease in the related liability of \$1.3 billion and an increase in the related asset of \$ million at December 31, 2019, which are being amortized over the remaining contractual life of the de-designated hedged items.

<sup>(3)</sup> These amounts include the amortized cost basis of the prepayable financial assets used to designate hedging relationships in which the hedged item is the last layer expected to be remaining at the end of the hedging relationship. At September 30, 2020, the amortized cost of the closed portfolios used in these hedging relationships was \$40.2 billion, of which \$8.4 billion was designated in the hedging relationship. The cumulative basis adjustments associated with these hedging relationships totaled \$3 million.

<sup>(4)</sup> Carrying value represents amortized cost.

## Cash Flow and Net Investment Hedges

The following table summarizes certain information related to cash flow hedges and net investment hedges for the three and nine months ended September 30, 2020 and 2019. Of the \$408 million after-tax net gain (\$542 million pretax) on derivatives in accumulated OCI at September 30, 2020, gains of \$191 million after-tax (\$252 million pretax) related to open cash flow hedges are expected to be reclassified into earnings

in the next 12 months. These net gains reclassified into earnings are expected to primarily increase net interest income related to the respective hedged items. For terminated cash flow hedges, the time period over which the majority of the forecasted transactions are hedged is approximately 3 years, with a maximum length of time for certain forecasted transactions of 16 years.

## Gains and Losses on Derivatives Designated as Cash Flow and Net Investment Hedges

(Dollars in millions, amounts pretax)

	Gains (Losses) Recognized in Accumulated OCI on Derivatives		Gains (Losses) in Income Reclassified from Accumulated OCI		Gains (Losses) Recognized in Accumulated OCI on Derivatives		Gains (Losses) in Income Reclassified from Accumulated OCI	
	Three Months Ended September 30, 2020		Three Months Ended September 30, 2019		Nine Months Ended September 30, 2020		Nine Months Ended September 30, 2019	
<b>Cash flow hedges</b>								
Interest rate risk on variable-rate assets <sup>(1)</sup>	\$	(101)	\$	5	\$	810	\$	(44)
Price risk on forecasted MBS purchases <sup>(1)</sup>		184		3		184		3
Price risk on certain compensation plans <sup>(2)</sup>		32		5		23		5
<b>Total</b>	<b>\$</b>	<b>115</b>	<b>\$</b>	<b>13</b>	<b>\$</b>	<b>1,017</b>	<b>\$</b>	<b>(36)</b>
<b>Net investment hedges</b>								
Foreign exchange risk <sup>(3)</sup>	\$	(703)	\$	—	\$	265	\$	1
<b>Cash flow hedges</b>								
Interest rate risk on variable-rate assets <sup>(1)</sup>	\$	125	\$	(27)	\$	743	\$	(78)
<b>Net investment hedges</b>								
Foreign exchange risk <sup>(3)</sup>	\$	786	\$	362	\$	590	\$	363

<sup>(1)</sup> Amounts reclassified from accumulated OCI are recorded in interest income in the Consolidated Statement of Income.

<sup>(2)</sup> Amounts reclassified from accumulated OCI are recorded in compensation and benefits expense in the Consolidated Statement of Income.

<sup>(3)</sup> Amounts reclassified from accumulated OCI are recorded in other income in the Consolidated Statement of Income. For the three and nine months ended September 30, 2020, amounts excluded from effectiveness testing and recognized in market making and similar activities were gains of \$10 million and \$115 million. For the same periods in 2019, amounts excluded from effectiveness testing and recognized in market making and similar activities were gains of \$2 million and \$109 million.

## Other Risk Management Derivatives

Other risk management derivatives are used by the Corporation to reduce certain risk exposures by economically hedging various assets and liabilities. The following table presents gains (losses) on these derivatives for the three and nine months ended September 30, 2020 and 2019. These gains (losses) are largely offset by the income or expense recorded on the hedged item.

### Gains and Losses on Other Risk Management Derivatives

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
Interest rate risk on mortgage activities <sup>(1, 2)</sup>	\$ 32	\$ 110	\$ 473	\$ 361
Credit risk on loans <sup>(2)</sup>	(28)	(8)	(6)	(48)
Interest rate and foreign currency risk on ALM activities <sup>(3)</sup>	(2,571)	1,576	(2,060)	2,450
Price risk on certain compensation plans <sup>(4)</sup>	263	(7)	109	629

<sup>(1)</sup> Primarily related to hedges of interest rate risk on mortgage servicing rights and interest rate lock commitments to originate mortgage loans that will be held for sale. The net gains on interest rate lock commitments which are not included in the table but are considered derivative instruments, were \$41 million and \$128 million for the three and nine months ended September 30, 2020 compared to \$0 million and \$56 million for the same periods in 2019.

<sup>(2)</sup> Gains (losses) on these derivatives are recorded in other income.

<sup>(3)</sup> Gains (losses) on these derivatives are recorded in market making and similar activities.

<sup>(4)</sup> Gains (losses) on these derivatives are recorded in compensation and benefits expense.

## Transfers of Financial Assets with Risk Retained through Derivatives

The Corporation enters into certain transactions involving the transfer of financial assets that are accounted for as sales where substantially all of the economic exposure to the transferred financial assets is retained through derivatives (e.g., interest rate and/or credit), but the Corporation does not retain control over the assets transferred. At September 30, 2020 and December 31, 2019, the Corporation had transferred \$5.1 billion and \$5.2 billion of non-U.S. government-guaranteed mortgage-backed securities (MBS) to a third-party trust and retained economic exposure to the transferred assets through derivative contracts. In connection with these transfers, the Corporation received gross cash proceeds of \$5.1 billion and \$5.2 billion at the transfer dates. At September 30, 2020 and December 31, 2019, the fair value of the transferred securities was \$5.2 billion and \$5.3 billion.

## Sales and Trading Revenue

The Corporation enters into trading derivatives to facilitate client transactions and to manage risk exposures arising from trading

account assets and liabilities. It is the Corporation's policy to include these derivative instruments in its trading activities, which include derivatives and non-derivative cash instruments. The resulting risk from these derivatives is managed on a portfolio basis as part of the Corporation's *Global Markets* business segment. For more information on sales and trading revenue, see *Note 3 – Derivatives* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

The following table, which includes both derivatives and non-derivative cash instruments, identifies the amounts in the respective income statement line items attributable to the Corporation's sales and trading revenue in *Global Markets*, categorized by primary risk, for the three and nine months ended September 30, 2020 and 2019. This table includes debit valuation adjustment (DVA) and funding valuation adjustment (FVA) gains (losses). *Global Markets* results in *Note 17 – Business Segment Information* are presented on a fully taxable-equivalent (FTE) basis. The table below is not presented on an FTE basis.

### Sales and Trading Revenue

	Three Months Ended September 30, 2020				Nine Months Ended September 30, 2020			
	Market making and similar activities	Net Interest Income	Other <sup>(1)</sup>	Total	Market making and similar activities	Net Interest Income	Other <sup>(1)</sup>	Total
(Dollars in millions)								
Interest rate risk	\$ 65	\$ 576	\$ 58	\$ 699	\$ 2,253	\$ 1,851	\$ 179	\$ 4,283
Foreign exchange risk	340	(10)	4	334	1,145	(8)	(3)	1,134
Equity risk	817	(7)	391	1,201	2,820	(99)	1,361	4,082
Credit risk	411	370	74	855	567	1,239	250	2,056
Other risk	92	(7)	12	97	272	21	24	317
<b>Total sales and trading revenue</b>	<b>\$ 1,725</b>	<b>\$ 922</b>	<b>\$ 539</b>	<b>\$ 3,186</b>	<b>\$ 7,057</b>	<b>\$ 3,004</b>	<b>\$ 1,811</b>	<b>\$ 11,872</b>
	Three Months Ended September 30, 2019				Nine Months Ended September 30, 2019			
	Market making and similar activities	Net Interest Income	Other <sup>(1)</sup>	Total	Market making and similar activities	Net Interest Income	Other <sup>(1)</sup>	Total
(Dollars in millions)								
Interest rate risk	\$ 30	\$ 477	\$ 212	\$ 719	\$ 659	\$ 1,273	\$ 357	\$ 2,289
Foreign exchange risk	313	16	12	341	954	50	28	1,032
Equity risk	907	(121)	366	1,152	2,886	(560)	1,161	3,487
Credit risk	273	451	140	864	1,039	1,349	405	2,793
Other risk	57	11	12	80	83	58	40	181
<b>Total sales and trading revenue</b>	<b>\$ 1,580</b>	<b>\$ 834</b>	<b>\$ 742</b>	<b>\$ 3,156</b>	<b>\$ 5,621</b>	<b>\$ 2,170</b>	<b>\$ 1,991</b>	<b>\$ 9,782</b>

<sup>(1)</sup> Represents amounts in investment and brokerage services and other income that are recorded in *Global Markets* and included in the definition of sales and trading revenue. Includes investment and brokerage services revenue of \$30 million and \$1.5 billion for the three and nine months ended September 30, 2020 compared to \$410 million and \$1.3 billion for the same periods in 2019.

## Credit Derivatives

The Corporation enters into credit derivatives primarily to facilitate client transactions and to manage credit risk exposures. Credit derivatives are classified as investment and non-investment grade based on the credit quality of the underlying referenced obligation. The Corporation considers ratings of BBB- or higher as investment grade. Non-investment grade includes non-rated credit derivative instruments. The Corporation discloses internal categorizations of investment

grade and non-investment grade consistent with how risk is managed for these instruments. For more information on credit derivatives, see *Note 3 – Derivatives* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

Credit derivative instruments where the Corporation is the seller of credit protection and their expiration at September 30, 2020 and December 31, 2019 are summarized in the following table.

### Credit Derivative Instruments

	Less than One Year	One to Three Years	Three to Five Years	Over Five Years	Total
<b>September 30, 2020</b>					
<b>Carrying Value</b>					
(Dollars in millions)					
Credit default swaps:					
Investment grade	\$ —	\$ 10	\$ 79	\$ 213	\$ 302
Non-investment grade	54	527	1,059	1,698	3,338
Total	54	537	1,138	1,911	3,640
Total return swaps/options:					
Investment grade	120	—	—	—	120
Non-investment grade	508	1	—	—	509
Total	628	1	—	—	629
<b>Total credit derivatives</b>	<b>\$ 682</b>	<b>\$ 538</b>	<b>\$ 1,138</b>	<b>\$ 1,911</b>	<b>\$ 4,269</b>
Credit-related notes:					
Investment grade	\$ —	\$ 2	\$ —	\$ 579	\$ 581
Non-investment grade	6	2	4	1,019	1,031
<b>Total credit-related notes</b>	<b>\$ 6</b>	<b>\$ 4</b>	<b>\$ 4</b>	<b>\$ 1,598</b>	<b>\$ 1,612</b>
<b>Maximum Payout/Notional</b>					
Credit default swaps:					
Investment grade	\$ 45,486	\$ 78,733	\$ 116,365	\$ 34,056	\$ 274,640
Non-investment grade	19,008	31,252	44,187	17,721	112,168
Total	64,494	109,985	160,552	51,777	386,808
Total return swaps/options:					
Investment grade	50,952	61	74	—	51,087
Non-investment grade	31,484	656	—	5	32,145
Total	82,436	717	74	5	83,232
<b>Total credit derivatives</b>	<b>\$ 146,930</b>	<b>\$ 110,702</b>	<b>\$ 160,626</b>	<b>\$ 51,782</b>	<b>\$ 470,040</b>
<b>December 31, 2019</b>					
<b>Carrying Value</b>					
Credit default swaps:					
Investment grade	\$ —	\$ 5	\$ 60	\$ 164	\$ 229
Non-investment grade	70	292	561	808	1,731
Total	70	297	621	972	1,960
Total return swaps/options:					
Investment grade	35	—	—	—	35
Non-investment grade	344	—	—	—	344
Total	379	—	—	—	379
<b>Total credit derivatives</b>	<b>\$ 449</b>	<b>\$ 297</b>	<b>\$ 621</b>	<b>\$ 972</b>	<b>\$ 2,339</b>
Credit-related notes:					
Investment grade	\$ —	\$ 3	\$ 1	\$ 639	\$ 643
Non-investment grade	6	2	1	1,125	1,134
<b>Total credit-related notes</b>	<b>\$ 6</b>	<b>\$ 5</b>	<b>\$ 2</b>	<b>\$ 1,764</b>	<b>\$ 1,777</b>
<b>Maximum Payout/Notional</b>					
Credit default swaps:					
Investment grade	\$ 55,827	\$ 67,838	\$ 71,320	\$ 17,708	\$ 212,693
Non-investment grade	19,049	26,521	29,618	12,337	87,525
Total	74,876	94,359	100,938	30,045	300,218
Total return swaps/options:					
Investment grade	56,488	—	62	76	56,626
Non-investment grade	28,707	657	104	60	29,528
Total	85,195	657	166	136	86,154
<b>Total credit derivatives</b>	<b>\$ 160,071</b>	<b>\$ 95,016</b>	<b>\$ 101,104</b>	<b>\$ 30,181</b>	<b>\$ 386,372</b>

The notional amount represents the maximum amount payable by the Corporation for most credit derivatives. However, the Corporation does not monitor its exposure to credit derivatives based solely on the notional amount because this measure does not take into consideration the probability of occurrence. As such, the notional amount is not a reliable indicator of the Corporation's exposure to these contracts.

Instead, a risk framework is used to define risk tolerances and establish limits so that certain credit risk-related losses occur within acceptable, predefined limits.

Credit-related notes in the table above include investments in securities issued by collateralized debt obligation (CDO), collateralized loan obligation and credit-linked note vehicles. These instruments are primarily classified as trading securities.



The carrying value of these instruments equals the Corporation's maximum exposure to loss. The Corporation is not obligated to make any payments to the entities under the terms of the securities owned.

### Credit-related Contingent Features and Collateral

Certain of the Corporation's derivative contracts contain credit risk-related contingent features, primarily in the form of ISDA master netting agreements and credit support documentation that enhance the creditworthiness of these instruments compared to other obligations of the respective counterparty with whom the Corporation has transacted. These contingent features may be for the benefit of the Corporation as well as its counterparties with respect to changes in the Corporation's creditworthiness and the mark-to-market exposure under the derivative transactions. At September 30, 2020 and December 31, 2019, the Corporation held cash and securities collateral of \$91.7 billion and \$84.3 billion and posted cash and securities collateral of \$79.9 billion and \$69.1 billion in the normal course of business under derivative agreements, excluding cross-product margining agreements where clients are permitted to margin on a net basis for both derivative and secured financing arrangements.

In connection with certain over-the-counter derivative contracts and other trading agreements, the Corporation can be required to provide additional collateral or to terminate transactions with certain counterparties in the event of a downgrade of the senior debt ratings of the Corporation or certain subsidiaries. The amount of additional collateral required depends on the contract and is usually a fixed incremental amount and/or the market value of the exposure. For more information on credit-related contingent features and collateral, see *Note 3 – Derivatives* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

At September 30, 2020, the amount of collateral, calculated based on the terms of the contracts, that the Corporation and certain subsidiaries could be required to post to counterparties but had not yet posted to counterparties was \$1.9 billion, including \$945 million for Bank of America, National Association.

Some counterparties are currently able to unilaterally terminate certain contracts, or the Corporation or certain subsidiaries may be required to take other action such as find a suitable replacement or obtain a guarantee. At September 30, 2020 and December 31, 2019, the liability recorded for these derivative contracts was not significant.

The following table presents the amount of additional collateral that would have been contractually required by derivative contracts and other trading agreements at September 30, 2020 if the rating agencies had downgraded their long-term senior debt ratings for the Corporation or certain subsidiaries by one incremental notch and by an additional second incremental notch.

### Additional Collateral Required to be Posted Upon Downgrade at September 30, 2020

(Dollars in millions)	One incremental notch	Second incremental notch
Bank of America Corporation	\$ 303	\$ 724
Bank of America, N.A. and subsidiaries <sup>(1)</sup>	85	536

<sup>(1)</sup> Included in Bank of America Corporation collateral requirements in this table.

The following table presents the derivative liabilities that would be subject to unilateral termination by counterparties and the amounts of collateral that would have been contractually required at September 30, 2020 if the long-term senior debt ratings for the Corporation or certain subsidiaries had been lower by one incremental notch and by an additional second incremental notch.

### Derivative Liabilities Subject to Unilateral Termination Upon Downgrade at September 30, 2020

(Dollars in millions)	One incremental notch	Second incremental notch
Derivative liabilities	\$ 14	\$ 935
Collateral posted	1	611

### Valuation Adjustments on Derivatives

The table below presents credit valuation adjustment (CVA), DVA and FVA gains (losses) on derivatives (excluding the effect of any related hedge activities), which are recorded in market making and similar activities, for the three and nine months ended September 30, 2020 and 2019. For more information on the valuation adjustments on derivatives, see *Note 3 – Derivatives* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

### Valuation Adjustments Gains (Losses) on Derivatives <sup>(1)</sup>

(Dollars in millions)	Three Months Ended September 30	
	2020	2019
Derivative assets (CVA)	\$ 174	\$ (41)
Derivative assets/liabilities (FVA)	27	(60)
Derivative liabilities (DVA)	(105)	17

(Dollars in millions)	Nine Months Ended September 30	
	2020	2019
Derivative assets (CVA)	\$ (334)	\$ (39)
Derivative assets/liabilities (FVA)	(60)	(27)
Derivative liabilities (DVA)	53	(56)

<sup>(1)</sup> At September 30, 2020 and December 31, 2019, cumulative CVA reduced the derivative assets balance by \$62 million and \$528 million, cumulative FVA reduced the net derivatives balance by \$213 million and \$153 million, and cumulative DVA reduced the derivative liabilities balance by \$338 million and \$285 million, respectively.

## NOTE 4 **Securities**

The table below presents the amortized cost, gross unrealized gains and losses, and fair value of AFS debt securities, other debt securities carried at fair value and HTM debt securities at September 30, 2020 and December 31, 2019.

### **Debt Securities**

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
<b>September 30, 2020</b>				
(Dollars in millions)				
<b>Available-for-sale debt securities</b>				
Mortgage-backed securities:				
Agency	\$ 67,566	\$ 2,349	\$ (51)	\$ 69,864
Agency-collateralized mortgage obligations	5,663	189	(15)	5,837
Commercial	15,190	1,017	(1)	16,206
Non-agency residential <sup>(1)</sup>	1,167	146	(30)	1,283
Total mortgage-backed securities	89,586	3,701	(97)	93,190
U.S. Treasury and agency securities	100,508	2,377	(7)	102,878
Non-U.S. securities	16,333	34	(13)	16,354
Other taxable securities, substantially all asset-backed securities	3,628	58	(10)	3,676
Total taxable securities	210,055	6,170	(127)	216,098
Tax-exempt securities	17,299	340	(45)	17,594
<b>Total available-for-sale debt securities</b>	<b>227,354</b>	<b>6,510</b>	<b>(172)</b>	<b>233,692</b>
<b>Other debt securities carried at fair value <sup>(2)</sup></b>	<b>11,982</b>	<b>399</b>	<b>(76)</b>	<b>12,305</b>
<b>Total debt securities carried at fair value</b>	<b>239,336</b>	<b>6,909</b>	<b>(248)</b>	<b>245,997</b>
<b>Held-to-maturity debt securities, substantially all U.S. agency mortgage-backed securities</b>	<b>338,418</b>	<b>9,727</b>	<b>(228)</b>	<b>347,917</b>
<b>Total debt securities <sup>(3,4)</sup></b>	<b>\$ 577,754</b>	<b>\$ 16,636</b>	<b>\$ (476)</b>	<b>\$ 593,914</b>
<b>December 31, 2019</b>				
<b>Available-for-sale debt securities</b>				
Mortgage-backed securities:				
Agency	\$ 121,698	\$ 1,013	\$ (183)	\$ 122,528
Agency-collateralized mortgage obligations	4,587	78	(24)	4,641
Commercial	14,797	249	(25)	15,021
Non-agency residential <sup>(1)</sup>	948	138	(9)	1,077
Total mortgage-backed securities	142,030	1,478	(241)	143,267
U.S. Treasury and agency securities	67,700	1,023	(195)	68,528
Non-U.S. securities	11,987	6	(2)	11,991
Other taxable securities, substantially all asset-backed securities	3,874	67	—	3,941
Total taxable securities	225,591	2,574	(438)	227,727
Tax-exempt securities	17,716	202	(6)	17,912
<b>Total available-for-sale debt securities</b>	<b>243,307</b>	<b>2,776</b>	<b>(444)</b>	<b>245,639</b>
<b>Other debt securities carried at fair value <sup>(2)</sup></b>	<b>10,596</b>	<b>255</b>	<b>(23)</b>	<b>10,828</b>
<b>Total debt securities carried at fair value</b>	<b>253,903</b>	<b>3,031</b>	<b>(467)</b>	<b>256,467</b>
<b>Held-to-maturity debt securities, substantially all U.S. agency mortgage-backed securities</b>	<b>215,730</b>	<b>4,433</b>	<b>(342)</b>	<b>219,821</b>
<b>Total debt securities <sup>(3,4)</sup></b>	<b>\$ 469,633</b>	<b>\$ 7,464</b>	<b>\$ (809)</b>	<b>\$ 476,288</b>

<sup>(1)</sup> At September 30, 2020 and December 31, 2019, the underlying collateral type included approximately 35 percent and 49 percent prime, four percent and six percent Alt-A and 61 percent and 45 percent subprime.

<sup>(2)</sup> Primarily includes non-U.S. securities used to satisfy certain international regulatory requirements. Any changes in value are reported in market making and similar activities. For detail on the components, see *Note 14 – Fair Value Measurements*.

<sup>(3)</sup> Includes securities pledged as collateral of \$5.7 billion and \$37.0 billion at September 30, 2020 and December 31, 2019.

<sup>(4)</sup> The Corporation held debt securities from Fannie Mae and Freddie Mac that each exceeded 10 percent of shareholders' equity, with an amortized cost of \$193.8 billion and \$76.9 billion, and a fair value of \$201.0 billion and \$79.3 billion at September 30, 2020, and an amortized cost of \$157.2 billion and \$54.1 billion, and a fair value of \$160.6 billion and \$55.1 billion at December 31, 2019.

At September 30, 2020, the accumulated net unrealized gain on AFS debt securities, excluding the amount related to debt securities previously transferred to held to maturity, included in accumulated OCI was \$4.8 billion, net of the related income tax expense of \$1.6 billion. The Corporation had nonperforming AFS debt securities of \$25 million and \$9 million at September 30, 2020 and December 31, 2019.

Effective January 1, 2020, the Corporation adopted the new accounting standard for credit losses that requires evaluation of AFS and HTM debt securities for any expected losses with recognition of an allowance for credit losses, when applicable. For more information, see *Note 1 – Summary of Significant Accounting Principles*. At September 30, 2020, the Corporation had \$194.8 billion in AFS debt securities, which were primarily

U.S. agency and U.S. Treasury securities that have a zero credit loss assumption. For the remaining \$38.9 billion in AFS debt securities, the amount of ECL was insignificant. Substantially all of the Corporation's HTM debt securities are U.S. agency and U.S. Treasury securities and have a zero credit loss assumption.

At September 30, 2020, the Corporation held equity securities at an aggregate fair value of \$809 million and other equity securities, as valued under the measurement alternative, at a carrying value of \$261 million, both of which are included in other assets. At September 30, 2020, the Corporation also held money market investments at a fair value of \$385 million, which are included in time deposits placed and other short-term investments.

In the three and nine months ended September 30, 2020, the Corporation recorded gross realized gains on sales of AFS debt securities of \$4 million and \$383 million and gross realized losses of \$2 million and \$4 million, resulting in net gains of \$2 million and \$379 million, with \$1 million and \$95 million of income taxes attributable to the realized net gain on sales of these AFS debt securities. Sales of AFS debt securities during the three months ended September 30, 2019 were not significant. In the nine months ended September 30, 2019, the Corporation recorded gross realized gains on sales of AFS debt

securities of \$228 million and gross realized losses of \$112 million, resulting in net gains of \$116 million with \$28 million of income taxes attributable to the realized net gains on sales of these AFS debt securities.

The table below presents the fair value and the associated gross unrealized losses on AFS debt securities and whether these securities have had gross unrealized losses for less than 12 months or for 12 months or longer at September 30, 2020 and December 31, 2019.

### Total AFS Debt Securities in a Continuous Unrealized Loss Position

	Less than Twelve Months		Twelve Months or Longer		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
<b>September 30, 2020</b>						
(Dollars in millions)						
<b>Continuously unrealized loss-positioned AFS debt securities</b>						
Mortgage-backed securities:						
Agency	\$ 5,284	\$ (51)	\$ 2	\$ —	\$ 5,286	\$ (51)
Agency-collateralized mortgage obligations	242	(3)	447	(12)	689	(15)
Commercial	244	(1)	190	—	434	(1)
Non-agency residential	326	(19)	75	(11)	401	(30)
Total mortgage-backed securities	6,096	(74)	714	(23)	6,810	(97)
U.S. Treasury and agency securities	3,893	(3)	503	(4)	4,396	(7)
Non-U.S. securities	2,749	(11)	224	(2)	2,973	(13)
Other taxable securities, substantially all asset-backed securities	984	(5)	342	(5)	1,326	(10)
Total taxable securities	13,722	(93)	1,783	(34)	15,505	(127)
Tax-exempt securities	4,135	(35)	964	(10)	5,099	(45)
<b>Total AFS debt securities in a continuous unrealized loss position</b>	<b>\$ 17,857</b>	<b>\$ (128)</b>	<b>\$ 2,747</b>	<b>\$ (44)</b>	<b>\$ 20,604</b>	<b>\$ (172)</b>
<b>December 31, 2019</b>						
<b>Continuously unrealized loss-positioned AFS debt securities</b>						
Mortgage-backed securities:						
Agency	\$ 17,641	\$ (41)	\$ 17,238	\$ (142)	\$ 34,879	\$ (183)
Agency-collateralized mortgage obligations	255	(1)	925	(23)	1,180	(24)
Commercial	2,180	(22)	442	(3)	2,622	(25)
Non-agency residential	122	(6)	22	(3)	144	(9)
Total mortgage-backed securities	20,198	(70)	18,627	(171)	38,825	(241)
U.S. Treasury and agency securities	12,836	(71)	18,866	(124)	31,702	(195)
Non-U.S. securities	851	—	837	(2)	1,688	(2)
Other taxable securities, substantially all asset-backed securities	938	—	222	—	1,160	—
Total taxable securities	34,823	(141)	38,552	(297)	73,375	(438)
Tax-exempt securities	4,286	(5)	190	(1)	4,476	(6)
<b>Total AFS debt securities in a continuous unrealized loss position</b>	<b>\$ 39,109</b>	<b>\$ (146)</b>	<b>\$ 38,742</b>	<b>\$ (298)</b>	<b>\$ 77,851</b>	<b>\$ (444)</b>

The remaining contractual maturity distribution and yields of the Corporation's debt securities carried at fair value and HTM debt securities at September 30, 2020 are summarized in the table below. Actual duration and yields may differ as prepayments on the loans underlying the mortgages or other asset-backed securities (ABS) are passed through to the Corporation.

### Maturities of Debt Securities Carried at Fair Value and Held-to-maturity Debt Securities

(Dollars in millions)	Due in One Year or Less		Due after One Year through Five Years		Due after Five Years through Ten Years		Due after Ten Years		Total	
	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>
<b>Amortized cost of debt securities carried at fair value</b>										
Mortgage-backed securities:										
Agency	\$ —	— %	\$ 7	5.37 %	\$ 59	4.51 %	\$ 67,500	3.36 %	\$ 67,566	3.36 %
Agency-collateralized mortgage obligations	—	—	—	—	24	2.54	5,639	2.95	5,663	2.95
Commercial	26	3.08	6,136	2.49	8,014	2.44	1,027	2.75	15,203	2.48
Non-agency residential	—	—	—	—	11	—	2,313	7.35	2,324	7.32
Total mortgage-backed securities	26	3.08	6,143	2.49	8,108	2.45	76,479	3.44	90,756	3.29
U.S. Treasury and agency securities	10,398	1.19	29,682	1.81	60,399	0.78	32	2.62	100,511	1.13
Non-U.S. securities	25,784	0.37	1,275	1.50	7	5.82	76	8.89	27,142	0.44
Other taxable securities, substantially all asset-backed securities	1,107	1.42	1,423	2.32	628	2.06	470	1.73	3,628	1.92
Total taxable securities	37,315	0.63	38,523	1.93	69,142	0.99	77,057	3.44	222,037	1.94
Tax-exempt securities	905	0.92	8,462	1.23	5,051	1.66	2,881	1.53	17,299	1.39
<b>Total amortized cost of debt securities carried at fair value</b>	<b>\$ 38,220</b>	<b>0.64</b>	<b>\$ 46,985</b>	<b>1.80</b>	<b>\$ 74,193</b>	<b>1.03</b>	<b>\$ 79,938</b>	<b>3.37</b>	<b>\$ 239,336</b>	<b>1.90</b>
<b>Amortized cost of HTM debt securities<sup>(2)</sup></b>	<b>\$ 66</b>	<b>1.87</b>	<b>\$ 81</b>	<b>3.29</b>	<b>\$ 17,188</b>	<b>1.86</b>	<b>\$ 321,083</b>	<b>2.71</b>	<b>\$ 338,418</b>	<b>2.67</b>
<b>Debt securities carried at fair value</b>										
Mortgage-backed securities:										
Agency	\$ —		\$ 8		\$ 63		\$ 69,793		\$ 69,864	
Agency-collateralized mortgage obligations	—		—		25		5,812		5,837	
Commercial	26		6,491		8,586		1,117		16,220	
Non-agency residential	—		—		22		2,469		2,491	
Total mortgage-backed securities	26		6,499		8,696		79,191		94,412	
U.S. Treasury and agency securities	10,452		31,020		61,377		32		102,881	
Non-U.S. securities	26,066		1,278		8		79		27,431	
Other taxable securities, substantially all asset-backed securities	1,112		1,445		640		482		3,679	
Total taxable securities	37,656		40,242		70,721		79,784		228,403	
Tax-exempt securities	907		8,548		5,201		2,938		17,594	
<b>Total debt securities carried at fair value</b>	<b>\$ 38,563</b>		<b>\$ 48,790</b>		<b>\$ 75,922</b>		<b>\$ 82,722</b>		<b>\$ 245,997</b>	
<b>Fair value of HTM debt securities<sup>(2)</sup></b>	<b>\$ 65</b>		<b>\$ 83</b>		<b>\$ 17,442</b>		<b>\$ 330,327</b>		<b>\$ 347,917</b>	

<sup>(1)</sup> The weighted-average yield is computed based on a constant effective interest rate over the contractual life of each security. The average yield considers the contractual coupon and the amortization of premiums and accretion of discounts, excluding the effect of related hedging derivatives.

<sup>(2)</sup> Substantially all U.S. agency MBS.

## NOTE 5 Outstanding Loans and Leases and Allowance for Credit Losses

The following tables present total outstanding loans and leases and an aging analysis for the Consumer Real Estate, Credit Card and Other Consumer, and Commercial portfolio segments, by class of financing receivables, at September 30, 2020 and December 31, 2019.

	30-59 Days Past Due <sup>(1)</sup>	60-89 Days Past Due <sup>(1)</sup>	90 Days or More Past Due <sup>(1)</sup>	Total Past Due 30 Days or More	Total Current or Less Than 30 Days Past Due <sup>(1)</sup>	Loans Accounted for Under the Fair Value Option	Total Outstandings
(Dollars in millions)							
<b>September 30, 2020</b>							
<b>Consumer real estate</b>							
Core portfolio							
Residential mortgage	\$ 1,244	\$ 280	\$ 829	\$ 2,353	\$ 221,542		\$ 223,895
Home equity	129	77	261	467	31,871		32,338
Non-core portfolio							
Residential mortgage	308	126	964	1,398	7,425		8,823
Home equity	29	20	76	125	4,067		4,192
<b>Credit card and other consumer</b>							
Credit card	486	238	546	1,270	78,564		79,834
Direct/Indirect consumer <sup>(2)</sup>	209	58	31	298	89,616		89,914
Other consumer	—	—	—	—	140		140
Total consumer	2,405	799	2,707	5,911	433,225		439,136
Consumer loans accounted for under the fair value option <sup>(3)</sup>						\$ 657	657
<b>Total consumer loans and leases</b>	<b>2,405</b>	<b>799</b>	<b>2,707</b>	<b>5,911</b>	<b>433,225</b>	<b>657</b>	<b>439,793</b>
<b>Commercial</b>							
U.S. commercial	500	213	558	1,271	292,663		293,934
Non-U.S. commercial	80	22	28	130	96,021		96,151
Commercial real estate <sup>(4)</sup>	58	3	206	267	62,187		62,454
Commercial lease financing	67	92	42	201	17,212		17,413
U.S. small business commercial <sup>(5)</sup>	71	51	83	205	38,645		38,850
Total commercial	776	381	917	2,074	506,728		508,802
Commercial loans accounted for under the fair value option <sup>(3)</sup>						6,577	6,577
<b>Total commercial loans and leases</b>	<b>776</b>	<b>381</b>	<b>917</b>	<b>2,074</b>	<b>506,728</b>	<b>6,577</b>	<b>515,379</b>
<b>Total loans and leases <sup>(6)</sup></b>	<b>\$ 3,181</b>	<b>\$ 1,180</b>	<b>\$ 3,624</b>	<b>\$ 7,985</b>	<b>\$ 939,953</b>	<b>\$ 7,234</b>	<b>\$ 955,172</b>
<b>Percentage of outstandings</b>	<b>0.33 %</b>	<b>0.12 %</b>	<b>0.38 %</b>	<b>0.83 %</b>	<b>98.41 %</b>	<b>0.76 %</b>	<b>100.00 %</b>

<sup>(1)</sup> Consumer real estate loans 30-59 days past due includes fully-insured loans of \$58 million and nonperforming loans of \$132 million. Consumer real estate loans 60-89 days past due includes fully-insured loans of \$18 million and nonperforming loans of \$96 million. Consumer real estate loans 90 days or more past due includes fully-insured loans of \$1.0 billion. Consumer real estate loans current or less than 30 days past due includes \$93 million and direct/indirect consumer includes \$8 million of nonperforming loans. For information on the Corporation's interest accrual policies and delinquency status for loan modifications related to the COVID-19 pandemic, see *Note 1 – Summary of Significant Accounting Principles*.

<sup>(2)</sup> Total outstandings primarily includes auto and specialty lending loans and leases of \$7.1 billion, U.S. securities-based lending loans of \$39.0 billion and non-U.S. consumer loans of \$2.9 billion.

<sup>(3)</sup> Consumer loans accounted for under the fair value option includes residential mortgage loans of \$14 million and home equity loans of \$343 million. Commercial loans accounted for under the fair value option includes U.S. commercial loans of \$4 billion and non-U.S. commercial loans of \$3.2 billion. For more information, see *Note 14 – Fair Value Measurements* and *Note 15 – Fair Value Option*.

<sup>(4)</sup> Total outstandings includes U.S. commercial real estate loans of \$8.7 billion and non-U.S. commercial real estate loans of \$3.7 billion.

<sup>(5)</sup> Includes PPP loans.

<sup>(6)</sup> Total outstandings includes loans and leases pledged as collateral of \$5.9 billion. The Corporation also pledged \$158.4 billion of loans with no related outstanding borrowings to secure potential borrowing capacity with the Federal Reserve Bank and Federal Home Loan Bank.

	30-59 Days Past Due <sup>(1)</sup>	60-89 Days Past Due <sup>(1)</sup>	90 Days or More Past Due <sup>(1)</sup>	Total Past Due 30 Days or More	Total Current or Less Than 30 Days Past Due <sup>(1)</sup>	Loans Accounted for Under the Fair Value Option	Total Outstandings
(Dollars in millions)	December 31, 2019						
<b>Consumer real estate</b>							
Core portfolio							
Residential mortgage	\$ 1,378	\$ 261	\$ 565	\$ 2,204	\$ 223,566		\$ 225,770
Home equity	135	70	198	403	34,823		35,226
Non-core portfolio							
Residential mortgage	458	209	1,263	1,930	8,469		10,399
Home equity	34	16	72	122	4,860		4,982
<b>Credit card and other consumer</b>							
Credit card	564	429	1,042	2,035	95,573		97,608
Direct/Indirect consumer <sup>(2)</sup>	297	85	35	417	90,581		90,998
Other consumer	—	—	—	—	192		192
Total consumer	2,866	1,070	3,175	7,111	458,064		465,175
Consumer loans accounted for under the fair value option <sup>(3)</sup>						\$ 594	594
<b>Total consumer loans and leases</b>	<b>2,866</b>	<b>1,070</b>	<b>3,175</b>	<b>7,111</b>	<b>458,064</b>	<b>594</b>	<b>465,769</b>
<b>Commercial</b>							
U.S. commercial	788	279	371	1,438	305,610		307,048
Non-U.S. commercial	35	23	8	66	104,900		104,966
Commercial real estate <sup>(4)</sup>	144	19	119	282	62,407		62,689
Commercial lease financing	100	56	39	195	19,685		19,880
U.S. small business commercial	119	56	107	282	15,051		15,333
Total commercial	1,186	433	644	2,263	507,653		509,916
Commercial loans accounted for under the fair value option <sup>(3)</sup>						7,741	7,741
<b>Total commercial loans and leases</b>	<b>1,186</b>	<b>433</b>	<b>644</b>	<b>2,263</b>	<b>507,653</b>	<b>7,741</b>	<b>517,657</b>
<b>Total loans and leases <sup>(5)</sup></b>	<b>\$ 4,052</b>	<b>\$ 1,503</b>	<b>\$ 3,819</b>	<b>\$ 9,374</b>	<b>\$ 965,717</b>	<b>\$ 8,335</b>	<b>\$ 983,426</b>
<b>Percentage of outstandings</b>	<b>0.41 %</b>	<b>0.15 %</b>	<b>0.39 %</b>	<b>0.95 %</b>	<b>98.20 %</b>	<b>0.85 %</b>	<b>100.00 %</b>

<sup>(1)</sup> Consumer real estate loans 30-59 days past due includes fully-insured loans of \$17 million and nonperforming loans of \$139 million. Consumer real estate loans 60-89 days past due includes fully-insured loans of \$206 million and nonperforming loans of \$114 million. Consumer real estate loans 90 days or more past due includes fully-insured loans of \$1.1 billion. Consumer real estate loans current or less than 30 days past due includes \$56 million and direct/indirect consumer includes \$5 million of nonperforming loans.

<sup>(2)</sup> Total outstandings primarily includes auto and specialty lending loans and leases of \$0.4 billion, U.S. securities-based lending loans of \$36.7 billion and non-U.S. consumer loans of \$2.8 billion.

<sup>(3)</sup> Consumer loans accounted for under the fair value option includes residential mortgage loans of \$57 million and home equity loans of \$337 million. Commercial loans accounted for under the fair value option includes U.S. commercial loans of \$3.7 billion and non-U.S. commercial loans of \$3.1 billion. For more information, see *Note 14 – Fair Value Measurements* and *Note 15 – Fair Value Option*.

<sup>(4)</sup> Total outstandings includes U.S. commercial real estate loans of \$59.0 billion and non-U.S. commercial real estate loans of \$3.7 billion.

<sup>(5)</sup> Total outstandings includes loans and leases pledged as collateral of \$25.9 billion. The Corporation also pledged \$168.2 billion of loans with no related outstanding borrowings to secure potential borrowing capacity with the Federal Reserve Bank and Federal Home Loan Bank.

The Corporation categorizes consumer real estate loans as core and non-core based on loan and customer characteristics such as origination date, product type, LTV, Fair Isaac Corporation (FICO) score and delinquency status consistent with its current consumer and mortgage servicing strategy. Generally, loans that were originated after January 1, 2010, qualified under government-sponsored enterprise (GSE) underwriting guidelines, or otherwise met the Corporation's underwriting guidelines in place in 2015 are characterized as core loans. All other loans are generally characterized as non-core loans and represent runoff portfolios.

The Corporation has entered into long-term credit protection agreements with Fannie Mae and Freddie Mac on loans totaling \$8.8 billion and \$7.5 billion at September 30, 2020 and December 31, 2019, providing full credit protection on residential mortgage loans that become severely delinquent. All of these loans are individually insured, and therefore the Corporation does not record an allowance for credit losses related to these loans.

## Nonperforming Loans and Leases

Commercial nonperforming loans increased to \$2.2 billion at September 30, 2020 from \$1.5 billion at December 31, 2019 with broad-based increases across multiple industries. Consumer nonperforming loans increased to \$2.4 billion at September 30, 2020 from \$2.1 billion at December 31, 2019 driven by loans with deferrals that expired and have subsequently become nonperforming, as well as the inclusion of \$137 million of certain loans that were previously classified as purchased credit-impaired loans and accounted for under a pool basis.

The table below presents the Corporation's nonperforming loans and leases including nonperforming TDRs, and loans accruing past due 90 days or more at September 30, 2020 and December 31, 2019. Nonperforming loans held-for-sale (LHFS) are excluded from nonperforming loans and leases as they are recorded at either fair value or the lower of cost or fair value. For information on the Corporation's interest accrual policies and delinquency status for loan modifications related to the COVID-19 pandemic, see *Note 1 – Summary of Significant Accounting Principles*. For more information on the criteria for classification as nonperforming, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

## Credit Quality

	Nonperforming Loans and Leases		Accruing Past Due 90 Days or More <sup>(1)</sup>	
	September 30 2020	December 31 2019	September 30 2020	December 31 2019
(Dollars in millions)				
Residential mortgage <sup>(2)</sup>	\$ 1,675	\$ 1,470	\$ 837	\$ 1,088
With negative allowance <sup>(3)</sup>	500	—	—	—
Home equity <sup>(2)</sup>	640	536	—	—
With negative allowance <sup>(3)</sup>	119	—	—	—
Credit Card	n/a	n/a	546	1,042
Direct/indirect consumer	42	47	27	33
<b>Total consumer</b>	<b>2,357</b>	<b>2,053</b>	<b>1,410</b>	<b>2,163</b>
U.S. commercial	1,351	1,094	199	106
Non-U.S. commercial	338	43	28	8
Commercial real estate	414	280	2	19
Commercial lease financing	14	32	32	20
U.S. small business commercial	76	50	77	97
<b>Total commercial</b>	<b>2,193</b>	<b>1,499</b>	<b>338</b>	<b>250</b>
<b>Total nonperforming loans</b>	<b>\$ 4,550</b>	<b>\$ 3,552</b>	<b>\$ 1,748</b>	<b>\$ 2,413</b>
<b>Percentage of outstanding loans and leases</b>	<b>0.48 %</b>	<b>0.36 %</b>	<b>0.18 %</b>	<b>0.25 %</b>

<sup>(1)</sup> For information on the Corporation's interest accrual policies and delinquency status for loan modifications related to the COVID-19 pandemic, see *Note 1 – Summary of Significant Accounting Principles*.

<sup>(2)</sup> Residential mortgage loans accruing past due 90 days or more are fully-insured loans. At September 30, 2020 and December 31, 2019 residential mortgage includes \$61 million and \$740 million of loans on which interest had been curtailed by the FHA, and therefore were no longer accruing interest, although principal was still insured, and \$276 million and \$348 million of loans on which interest was still accruing.

<sup>(3)</sup> At September 30, 2020, Residential Mortgage and Home Equity include negative allowance on nonperforming loans of \$70 million and \$106 million.

n/a = not applicable

Included in the September 30, 2020 nonperforming loans are \$120 million and \$17 million of residential mortgage and home equity loans that prior to the January 1, 2020 adoption of the new credit loss standard were not included in nonperforming loans, as they were previously classified as purchased credit-impaired loans and accounted for under a pool basis.

### Credit Quality Indicators

The Corporation monitors credit quality within its Consumer Real Estate, Credit Card and Other Consumer, and Commercial portfolio segments based on primary credit quality indicators. For more information on the portfolio segments, see *Note 1 – Summary of Significant Accounting Principles*. Within the Consumer Real Estate portfolio segment, the primary credit quality indicators are refreshed LTV and refreshed FICO score. Refreshed LTV measures the carrying value of the loan as a percentage of the value of the property securing the loan, refreshed quarterly. Home equity loans are evaluated using CLTV, which measures the carrying value of the Corporation's loan and available line of credit combined with any outstanding senior liens against the property as a percentage of the value of the property securing the loan, refreshed quarterly. FICO score measures the creditworthiness of the borrower based on the financial obligations of the borrower and the borrower's credit history. FICO scores are typically refreshed quarterly or more

frequently. Certain borrowers (e.g., borrowers that have had debts discharged in a bankruptcy proceeding) may not have their FICO scores updated. FICO scores are also a primary credit quality indicator for the Credit Card and Other Consumer portfolio segment and the business card portfolio within U.S. small business commercial. Within the Commercial portfolio segment, loans are evaluated using the internal classifications of pass rated or reservable criticized as the primary credit quality indicators. The term reservable criticized refers to those commercial loans that are internally classified or listed by the Corporation as Special Mention, Substandard or Doubtful, which are asset quality categories defined by regulatory authorities. These assets have an elevated level of risk and may have a high probability of default or total loss. Pass rated refers to all loans not considered reservable criticized. In addition to these primary credit quality indicators, the Corporation uses other credit quality indicators for certain types of loans.

The following tables present certain credit quality indicators for the Corporation's Consumer Real Estate, Credit Card and Other Consumer, and Commercial portfolio segments by class of financing receivables and year of origination for term loan balances at September 30, 2020, including revolving loans that converted to term loans without an additional credit decision after origination or through a TDR.

## Residential Mortgage – Credit Quality Indicators By Vintage

(Dollars in millions)	Total as of September 30, 2020	2020	2019	2018	2017	2016	Prior
<b>Total Residential Mortgage</b>							
Refreshed LTV							
Less than or equal to 90 percent	\$ 216,204	\$ 60,442	\$ 48,822	\$ 17,053	\$ 24,435	\$ 25,616	\$ 39,836
Greater than 90 percent but less than or equal to 100 percent	3,482	1,743	989	244	104	127	275
Greater than 100 percent	1,310	685	207	67	46	39	266
Fully-insured loans	11,722	2,746	2,332	441	379	2,215	3,609
<b>Total Residential Mortgage</b>	<b>\$ 232,718</b>	<b>\$ 65,616</b>	<b>\$ 52,350</b>	<b>\$ 17,805</b>	<b>\$ 24,964</b>	<b>\$ 27,997</b>	<b>\$ 43,986</b>
<b>Total Residential Mortgage</b>							
Refreshed FICO score							
Less than 620	\$ 2,776	\$ 711	\$ 174	\$ 157	\$ 170	\$ 179	\$ 1,385
Greater than or equal to 620 and less than 680	5,505	1,596	710	471	408	414	1,906
Greater than or equal to 680 and less than 740	26,198	7,510	5,268	2,229	2,629	2,420	6,142
Greater than or equal to 740	186,517	53,053	43,866	14,507	21,378	22,769	30,944
Fully-insured loans	11,722	2,746	2,332	441	379	2,215	3,609
<b>Total Residential Mortgage</b>	<b>\$ 232,718</b>	<b>\$ 65,616</b>	<b>\$ 52,350</b>	<b>\$ 17,805</b>	<b>\$ 24,964</b>	<b>\$ 27,997</b>	<b>\$ 43,986</b>

## Home Equity - Credit Quality Indicators

(Dollars in millions)	Total	Home Equity Loans and Reverse Mortgages <sup>(1)</sup>	Revolving Loans	Revolving Loans Converted to Term Loans
<b>September 30, 2020</b>				
<b>Total Home Equity</b>				
Refreshed LTV				
Less than or equal to 90 percent	\$ 35,542	\$ 1,972	\$ 24,067	\$ 9,503
Greater than 90 percent but less than or equal to 100 percent	415	133	115	167
Greater than 100 percent	573	196	116	261
<b>Total Home Equity</b>	<b>\$ 36,530</b>	<b>\$ 2,301</b>	<b>\$ 24,298</b>	<b>\$ 9,931</b>
<b>Total Home Equity</b>				
Refreshed FICO score				
Less than 620	\$ 1,112	\$ 246	\$ 241	\$ 625
Greater than or equal to 620 and less than 680	1,912	278	577	1,057
Greater than or equal to 680 and less than 740	6,144	569	3,107	2,468
Greater than or equal to 740	27,362	1,208	20,373	5,781
<b>Total Home Equity</b>	<b>\$ 36,530</b>	<b>\$ 2,301</b>	<b>\$ 24,298</b>	<b>\$ 9,931</b>

<sup>(1)</sup> Includes reverse mortgages of \$1.3 billion and home equity loans of \$974 million which are no longer originated.

## Credit Card and Direct/Indirect Consumer – Credit Quality Indicators By Vintage

(Dollars in millions)	Direct/Indirect								Credit Card		
	Term Loans by Origination Year										
	Total Direct/Indirect as of September 30, 2020	Revolving Loans	2020	2019	2018	2017	2016	Prior	Total Credit Card as of September 30, 2020	Revolving Loans	Revolving Loans Converted to Term Loans <sup>(2)</sup>
Refreshed FICO score											
Less than 620	\$ 1,041	\$ 20	\$ 81	\$ 204	\$ 194	\$ 279	\$ 181	\$ 82	\$ 3,878	\$ 3,686	\$ 192
Greater than or equal to 620 and less than 680	2,227	23	498	628	379	357	213	129	9,788	9,572	216
Greater than or equal to 680 and less than 740	7,483	84	2,171	2,280	1,188	894	489	377	28,496	28,311	185
Greater than or equal to 740	36,620	125	9,693	11,729	6,723	4,207	2,164	1,979	37,672	37,628	44
Other internal credit metrics <sup>(1, 2)</sup>	42,543	41,903	46	120	111	75	52	236	—	—	—
<b>Total credit card and other consumer</b>	<b>\$ 89,914</b>	<b>\$ 42,155</b>	<b>\$ 12,489</b>	<b>\$ 14,961</b>	<b>\$ 8,595</b>	<b>\$ 5,812</b>	<b>\$ 3,099</b>	<b>\$ 2,803</b>	<b>\$ 79,834</b>	<b>\$ 79,197</b>	<b>\$ 637</b>

<sup>(1)</sup> Other internal credit metrics may include delinquency status, geography or other factors.

<sup>(2)</sup> Direct/indirect consumer includes \$41.9 billion of securities-based lending which is typically supported by highly liquid collateral with market value greater than or equal to the outstanding loan balance and therefore has minimal credit risk at September 30, 2020.

<sup>(3)</sup> Represents troubled debt restructurings that were modified into term loans.



## Commercial – Credit Quality Indicators By Vintage <sup>(1, 2)</sup>

(Dollars in millions)	Term Loans										Revolving Loans
	Total as of September 30, 2020	Amortized Cost Basis by Origination Year									
		2020	2019	2018	2017	2016	Prior				
U.S. Commercial											
Risk ratings											
Pass rated	\$ 273,068	\$ 29,791	\$ 38,045	\$ 19,560	\$ 16,259	\$ 8,621	\$ 18,776	\$ 142,016			
Reservable criticized	20,866	1,868	2,430	2,377	906	668	1,925	10,692			
Total U.S. Commercial	\$ 293,934	\$ 31,659	\$ 40,475	\$ 21,937	\$ 17,165	\$ 9,289	\$ 20,701	\$ 152,708			
Non-U.S. Commercial											
Risk ratings											
Pass rated	\$ 92,125	\$ 12,666	\$ 13,306	\$ 8,519	\$ 5,407	\$ 1,557	\$ 6,842	\$ 43,828			
Reservable criticized	4,026	533	491	443	252	49	172	2,086			
Total Non-U.S. Commercial	\$ 96,151	\$ 13,199	\$ 13,797	\$ 8,962	\$ 5,659	\$ 1,606	\$ 7,014	\$ 45,914			
Commercial Real Estate											
Risk ratings											
Pass rated	\$ 55,528	\$ 6,168	\$ 15,968	\$ 10,438	\$ 5,800	\$ 3,470	\$ 7,503	\$ 6,181			
Reservable criticized	6,926	348	1,613	1,430	1,393	617	1,106	419			
Total Commercial Real Estate	\$ 62,454	\$ 6,516	\$ 17,581	\$ 11,868	\$ 7,193	\$ 4,087	\$ 8,609	\$ 6,600			
Commercial Lease Financing											
Risk ratings											
Pass rated	\$ 16,756	\$ 2,292	\$ 3,433	\$ 3,240	\$ 2,753	\$ 1,831	\$ 3,207	\$ —			
Reservable criticized	657	71	89	164	68	63	202	—			
Total Commercial Lease Financing	\$ 17,413	\$ 2,363	\$ 3,522	\$ 3,404	\$ 2,821	\$ 1,894	\$ 3,409	\$ —			
U.S. Small Business Commercial <sup>(3)</sup>											
Risk ratings											
Pass rated	\$ 30,787	\$ 25,856	\$ 1,185	\$ 880	\$ 780	\$ 563	\$ 1,340	\$ 183			
Reservable criticized	1,339	78	222	216	182	128	500	13			
Total U.S. Small Business Commercial	\$ 32,126	\$ 25,934	\$ 1,407	\$ 1,096	\$ 962	\$ 691	\$ 1,840	\$ 196			
Total <sup>(1, 2)</sup>	\$ 502,078	\$ 79,671	\$ 76,782	\$ 47,267	\$ 33,800	\$ 17,567	\$ 41,573	\$ 205,418			

<sup>(1)</sup> Excludes \$6.6 billion of loans accounted for under the fair value option at September 30, 2020.

<sup>(2)</sup> Includes \$54 million of loans that converted from revolving to term loans.

<sup>(3)</sup> Excludes U.S. Small Business Card loans of \$0.7 billion. Refreshed FICO scores for this portfolio are \$266 million for less than 620; \$599 million for greater than or equal to 620 and less than 680; \$1.8 billion for greater than or equal to 680 and less than 740; and \$4.1 billion greater than or equal to 740.

As a result of the economic impact of COVID-19, commercial asset quality weakened during the three months ended September 30, 2020. Commercial reservable criticized utilized exposure increased to \$35.7 billion at September 30, 2020 from \$11.5 billion (to 6.55 percent from 2.09 percent of total commercial reservable utilized exposure) at December 31, 2019 with increases spread across multiple industries including travel and entertainment.

### Troubled Debt Restructurings

The Corporation began entering into loan modifications with borrowers in response to the COVID-19 pandemic, which have not been classified as TDRs, and therefore are not included in the discussion below. For more information on the criteria for classifying loans as TDRs, see *Note 1 – Summary of Significant Accounting Principles*.

### Consumer Real Estate

Modifications of consumer real estate loans are classified as TDRs when the borrower is experiencing financial difficulties and a concession has been granted. Concessions may include reductions in interest rates, capitalization of past due amounts, principal and/or interest forbearance, payment extensions, principal and/or interest forgiveness, or combinations thereof. Prior to permanently modifying a loan, the Corporation may enter into trial modifications with certain borrowers under both government and proprietary programs. Trial modifications generally represent a three- to four-month period during which

the borrower makes monthly payments under the anticipated modified payment terms. Upon successful completion of the trial period, the Corporation and the borrower enter into a permanent modification. Binding trial modifications are classified as TDRs when the trial offer is made and continue to be classified as TDRs regardless of whether the borrower enters into a permanent modification.

Consumer real estate loans of \$385 million that have been discharged in Chapter 7 bankruptcy with no change in repayment terms and not reaffirmed by the borrower were included in TDRs at September 30, 2020, of which \$101 million were classified as nonperforming and \$71 million were loans fully insured.

Consumer real estate TDRs are measured primarily based on the net present value of the estimated cash flows discounted at the loan's original effective interest rate. If the carrying value of a TDR exceeds this amount, a specific allowance is recorded as a component of the allowance for loan and lease losses. Alternatively, consumer real estate TDRs that are considered to be dependent solely on the collateral for repayment (e.g., due to the lack of income verification) are measured based on the estimated fair value of the collateral, and a charge-off is recorded if the carrying value exceeds the fair value of the collateral. Consumer real estate loans that reach 180 days past due prior to modification are charged off to their net realizable value, less costs to sell, before they are modified as TDRs in accordance with established policy. Subsequent declines in the fair value of the collateral after a loan has reached 180 days

past due are recorded as charge-offs. Fully-insured loans are protected against principal loss, and therefore, the Corporation does not record an allowance for loan and lease losses on the outstanding principal balance, even after they have been modified in a TDR.

At September 30, 2020 and December 31, 2019, remaining commitments to lend additional funds to debtors whose terms have been modified in a consumer real estate TDR were not significant. Consumer real estate foreclosed properties totaled \$135 million and \$229 million at September 30, 2020 and December 31, 2019. The carrying value of consumer real estate loans, including fully-insured loans, for which formal foreclosure proceedings were in process at September 30, 2020 was \$1.3 billion. Although the Corporation has paused formal loan foreclosure proceedings and foreclosure sales for occupied properties, during the nine months ended September 30, 2020, the Corporation reclassified \$169 million of consumer real

estate loans completed or which were in process prior to the pause in foreclosures, to foreclosed properties or, for properties acquired upon foreclosure of certain government-guaranteed loans (principally FHA-insured loans), to other assets. The reclassifications represent non-cash investing activities and, accordingly, are not reflected in the Consolidated Statement of Cash Flows.

The table below presents the September 30, 2020 and 2019 unpaid principal balance, carrying value, and average pre- and post-modification interest rates of consumer real estate loans that were modified in TDRs during the three and nine months ended September 30, 2020 and 2019. The following Consumer Real Estate portfolio segment tables include loans that were initially classified as TDRs during the period and also loans that had previously been classified as TDRs and were modified again during the period.

### Consumer Real Estate – TDRs Entered into During The Three and Nine Months Ended September 30, 2020 and 2019 <sup>(1)</sup>

	Unpaid Principal Balance	Carrying Value	Pre-Modification Interest Rate	Post-Modification Interest Rate <sup>(2)</sup>	Unpaid Principal Balance	Carrying Value	Pre-Modification Interest Rate	Post-Modification Interest Rate <sup>(2)</sup>
(Dollars in millions)	Three Months Ended September 30, 2020				Nine Months Ended September 30, 2020			
Residential mortgage	\$ 103	\$ 88	4.06 %	3.99 %	\$ 294	\$ 244	4.07 %	3.90 %
Home equity	12	10	4.25	4.08	56	45	3.85	3.73
<b>Total</b>	<b>\$ 115</b>	<b>\$ 98</b>	<b>4.08</b>	<b>4.00</b>	<b>\$ 350</b>	<b>\$ 289</b>	<b>4.03</b>	<b>3.87</b>
	Three Months Ended September 30, 2019				Nine Months Ended September 30, 2019			
Residential mortgage	\$ 148	\$ 125	4.29 %	4.25 %	\$ 368	\$ 301	4.24 %	4.22 %
Home equity	34	27	5.28	5.27	129	94	5.19	4.60
<b>Total</b>	<b>\$ 182</b>	<b>\$ 152</b>	<b>4.48</b>	<b>4.44</b>	<b>\$ 497</b>	<b>\$ 395</b>	<b>4.49</b>	<b>4.32</b>

<sup>(1)</sup> For more information on the Corporation's loan modification programs offered in response to the COVID-19 pandemic, which are not TDRs, see Note 1 – Summary of Significant Accounting Principles.

<sup>(2)</sup> The post-modification interest rate reflects the interest rate applicable only to permanently completed modifications, which exclude loans that are in a trial modification period.

The table below presents the September 30, 2020 and 2019 carrying value for consumer real estate loans that were modified in a TDR during the three and nine months ended September 30, 2020 and 2019, by type of modification.

### Consumer Real Estate – Modification Programs <sup>(1)</sup>

	TDRs Entered into During the			
	Three Months Ended September 30		Nine Months Ended September 30	
(Dollars in millions)	2020	2019	2020	2019
Modifications under government programs	\$ —	\$ 8	\$ 8	\$ 32
Modifications under proprietary programs	50	18	136	125
Loans discharged in Chapter 7 bankruptcy <sup>(2)</sup>	15	16	44	54
Trial modifications	33	110	101	184
<b>Total modifications</b>	<b>\$ 98</b>	<b>\$ 152</b>	<b>\$ 289</b>	<b>\$ 395</b>

<sup>(1)</sup> For more information on the Corporation's loan modification programs offered in response to the COVID-19 pandemic, which are not TDRs, see Note 1 – Summary of Significant Accounting Principles.

<sup>(2)</sup> Includes loans discharged in Chapter 7 bankruptcy with no change in repayment terms that are classified as TDRs.

The table below presents the carrying value of consumer real estate loans that entered into payment default during the three and nine months ended September 30, 2020 and 2019 that were modified in a TDR during the 12 months preceding payment default. A payment default for consumer real estate TDRs is recognized when a borrower has missed three monthly payments (not necessarily consecutively) since modification.

### Consumer Real Estate – TDRs Entering Payment Default that were Modified During the Preceding 12 Months <sup>(1)</sup>

	Three Months Ended September 30		Nine Months Ended September 30	
(Dollars in millions)	2020	2019	2020	2019
Modifications under government programs	\$ 6	\$ 7	\$ 14	\$ 20
Modifications under proprietary programs	8	19	27	68
Loans discharged in Chapter 7 bankruptcy <sup>(2)</sup>	4	8	15	26
Trial modifications <sup>(3)</sup>	15	13	45	40
<b>Total modifications</b>	<b>\$ 33</b>	<b>\$ 47</b>	<b>\$ 101</b>	<b>\$ 154</b>

<sup>(1)</sup> For more information on the Corporation's loan modification programs offered in response to the COVID-19 pandemic, which are not TDRs, see Note 1 – Summary of Significant Accounting Principles.

<sup>(2)</sup> Includes loans discharged in Chapter 7 bankruptcy with no change in repayment terms that are classified as TDRs.

<sup>(3)</sup> Includes trial modification offers to which the customer did not respond.

### Credit Card and Other Consumer

The Corporation seeks to assist customers that are experiencing financial difficulty by modifying loans while ensuring compliance with federal and local laws and guidelines. Credit card and other consumer loan modifications generally involve reducing the interest rate on the account, placing the customer on a fixed payment plan not exceeding 60 months and canceling the customer's available line of credit, all of which are considered TDRs. The Corporation makes loan modifications directly with borrowers for debt held only by the Corporation (internal programs). Additionally, the Corporation makes loan modifications for borrowers working with third-party renegotiation

agencies that provide solutions to customers' entire unsecured debt structures (external programs). The Corporation classifies other secured consumer loans that have been discharged in Chapter 7 bankruptcy as TDRs which are written down to collateral value and placed on nonaccrual status no later than the time of discharge.

The table below provides information on the Corporation's Credit Card and Other Consumer TDR portfolio including the September 30, 2020 and 2019 unpaid principal balance, carrying value, and average pre- and post-modification interest rates of loans that were modified in TDRs during the three and nine months ended September 30, 2020 and 2019.

### Credit Card and Other Consumer – TDRs Entered into During the Three and Nine Months Ended September 30, 2020 and 2019 <sup>(1)</sup>

	Unpaid Principal Balance	Carrying Value <sup>(2)</sup>	Pre-Modification Interest Rate	Post-Modification Interest Rate	Unpaid Principal Balance	Carrying Value <sup>(2)</sup>	Pre-Modification Interest Rate	Post-Modification Interest Rate
	Three Months Ended September 30, 2020				Nine Months Ended September 30, 2020			
(Dollars in millions)								
Credit card	\$ 71	\$ 77	18.19 %	6.86 %	\$ 203	\$ 214	18.06 %	5.82 %
Direct/Indirect consumer	35	29	6.02	6.02	50	37	5.87	5.87
<b>Total</b>	<b>\$ 106</b>	<b>\$ 106</b>	<b>14.85</b>	<b>6.63</b>	<b>\$ 253</b>	<b>\$ 251</b>	<b>16.29</b>	<b>5.83</b>
	Three Months Ended September 30, 2019				Nine Months Ended September 30, 2019			
Credit card	\$ 100	\$ 107	19.62 %	5.36 %	\$ 267	\$ 281	19.50 %	5.35 %
Direct/Indirect consumer	19	11	5.32	5.32	35	19	5.23	5.22
<b>Total</b>	<b>\$ 119</b>	<b>\$ 118</b>	<b>18.36</b>	<b>5.36</b>	<b>\$ 302</b>	<b>\$ 300</b>	<b>18.62</b>	<b>5.34</b>

<sup>(1)</sup> For more information on the Corporation's loan modification programs offered in response to the COVID-19 pandemic, which are not TDRs, see Note 1 – Summary of Significant Accounting Principles.

<sup>(2)</sup> Includes accrued interest and fees.

The table below presents the September 30, 2020 and 2019 carrying value for Credit Card and Other Consumer loans that were modified in a TDR during the three and nine months ended September 30, 2020 and 2019, by program type.

### Credit Card and Other Consumer – TDRs by Program Type <sup>(1)</sup>

	TDRs Entered into During the Three Months Ended September 30		TDRs Entered into During the Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
Internal programs	\$ 80	\$ 76	\$ 178	\$ 196
External programs	19	31	59	86
Other	7	11	14	18
<b>Total</b>	<b>\$ 106</b>	<b>\$ 118</b>	<b>\$ 251</b>	<b>\$ 300</b>

<sup>(1)</sup> Includes accrued interest and fees. For more information on the Corporation's loan modification programs offered in response to the COVID-19 pandemic, which are not TDRs, see Note 1 – Summary of Significant Accounting Principles.

Credit card and other consumer loans are deemed to be in payment default during the quarter in which a borrower misses the second of two consecutive payments. Payment defaults are one of the factors considered when projecting future cash flows in the calculation of the allowance for loan and lease losses for credit card and other consumer. Based on historical experience, the Corporation estimates that 14 percent of new credit card TDRs and 22 percent of new direct/indirect consumer TDRs may be in payment default within 12 months after modification.

### Commercial Loans

Modifications of loans to commercial borrowers that are experiencing financial difficulty are designed to reduce the Corporation's loss exposure while providing the borrower with an opportunity to work through financial difficulties, often to avoid foreclosure or bankruptcy. Each modification is unique and reflects the individual circumstances of the borrower. Modifications that result in a TDR may include extensions of maturity at a concessionary (below market) rate of interest, payment forbearances or other actions designed to benefit the borrower while mitigating the Corporation's risk exposure.

Reductions in interest rates are rare. Instead, the interest rates are typically increased, although the increased rate may not represent a market rate of interest. Infrequently, concessions may also include principal forgiveness in connection with foreclosure, short sale or other settlement agreements leading to termination or sale of the loan.

At the time of restructuring, the loans are remeasured to reflect the impact, if any, on projected cash flows resulting from the modified terms. If a portion of the loan is deemed to be uncollectible, a charge-off may be recorded at the time of restructuring. Alternatively, a charge-off may have already been recorded in a previous period such that no charge-off is required at the time of modification. For more information on modifications for the U.S. small business commercial portfolio, see Credit Card and Other Consumer in this Note.

At September 30, 2020 and December 31, 2019, remaining commitments to lend additional funds to debtors whose terms have been modified in a commercial loan TDR were \$471 million and \$445 million. The balance of commercial TDRs in payment default was \$391 million at September 30, 2020 and \$207 million at December 31, 2019.

## Loans Held-for-sale

The Corporation had LHFS of \$4.4 billion and \$9.2 billion at September 30, 2020 and December 31, 2019. Cash and non-cash proceeds from sales and paydowns of loans originally classified as LHFS were \$16.1 billion and \$19.6 billion for the nine months ended September 30, 2020 and 2019. Cash used for originations and purchases of LHFS totaled approximately \$11.1 billion and \$18.7 billion for the nine months ended September 30, 2020 and 2019.

## Accrued Interest Receivable

Accrued interest receivable for loans and leases and loans held-for-sale at September 30, 2020 and December 31, 2019 was \$2.5 billion and \$2.6 billion and is reported in customer and other receivables on the Consolidated Balance Sheet.

Outstanding credit card loan balances include unpaid principal, interest and fees. Credit card loans are not classified as nonperforming but are charged off no later than the end of the month in which the account becomes 180 days past due, within 60 days after receipt of notification of death or bankruptcy, or upon confirmation of fraud. During the three and nine months ended September 30, 2020, the Corporation reversed \$111 million and \$417 million of interest and fee income against the income statement line item in which it was originally recorded upon charge-off of the principal balance of the loan.

For the outstanding residential mortgage, home equity, direct/indirect consumer and commercial loan balances classified as nonperforming during the three and nine months ended September 30, 2020, the Corporation reversed \$11 million and \$29 million of interest and fee income at the time the loans were classified as nonperforming against the income statement line item in which it was originally recorded. For more information on the Corporation's nonperforming loan policies, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

## Allowance for Credit Losses

On January 1, 2020, the Corporation adopted the new accounting standard that requires the measurement of the allowance for credit losses to be based on management's best estimate of lifetime ECL inherent in the Corporation's relevant financial assets. Upon adoption of the new accounting standard, the Corporation recorded a \$3.3 billion, or 32 percent, increase in the allowance for credit losses on January 1, 2020, which was comprised of a net increase of \$2.9 billion in the allowance for loan and lease losses and a \$310 million increase in the reserve for unfunded lending commitments. The net increase in the allowance for loan and lease losses was primarily driven by a \$3.1 billion increase in credit card as the Corporation now reserves for the life of these receivables. The increase in the reserve for unfunded lending commitments included \$119 million in the consumer portfolio for the undrawn portion of HELOCs and \$191 million in the commercial portfolio. For more information on the Corporation's credit loss accounting policies including the allowance for credit losses see *Note 1 – Summary of Significant Accounting Principles*.

The allowance for credit losses is estimated using quantitative and qualitative methods that consider a variety of factors such as historical loss experience, the current credit quality of the portfolio as well as an economic outlook over the life of the loan. Qualitative reserves cover losses that are expected but, in the Corporation's assessment, may not be adequately represented in the quantitative methods or the economic assumptions. The Corporation incorporates forward-looking information through the use of several macroeconomic scenarios in determining the weighted economic outlook over the forecasted life of the assets. These scenarios include key macroeconomic variables such as gross domestic product, unemployment rate and home price index. The scenarios that are chosen each quarter and the weighting given to each scenario depend on a variety of factors including recent economic events, leading economic indicators, internal and third-party economist views, and industry trends.

As of January 1, 2020, to determine the allowance for credit losses, the Corporation used a series of economic outlooks that resulted in an economic outlook that was weighted towards the potential of a recession with some expectation of tail risk similar to the severely adverse scenario used in stress testing. Various economic outlooks were also used in the September 30, 2020 estimate for allowance for credit losses that included consensus estimates, multiple downside scenarios which assumed a significantly longer period until economic recovery, a tail risk scenario similar to the severely adverse scenario used in stress testing and an upside scenario to reflect the potential for continued improvement in the consensus outlooks. The unemployment rate under this weighted economic outlook is nearly nine percent as of the fourth quarter of 2020 and continues to gradually decline to seven percent in late 2021. Additionally, in this economic outlook, gross domestic product returns to pre-pandemic levels in late 2022.

The Corporation also factored into its allowance for credit losses an estimated impact from higher-risk segments that included leveraged loans and industries such as travel and entertainment, which have been adversely impacted from the effects of COVID-19, as well as the energy sector. The Corporation also holds additional reserves for borrowers who requested deferrals that take into account their credit characteristics and payment behavior subsequent to deferral.

The allowance for credit losses at September 30, 2020 was \$21.5 billion, an increase of \$8.0 billion compared to January 1, 2020. The increase in the allowance for credit losses was driven by the deterioration in the economic outlook resulting from the impact of COVID-19. The increase in the allowance for credit losses was comprised of a net increase of \$7.2 billion in the allowance for loan and lease losses and a \$787 million increase in the reserve for unfunded lending commitments. The increase in the allowance for loan and lease losses was attributed to \$415 million in the consumer real estate portfolio, \$2.4 billion in the credit card and other consumer portfolio, and \$4.4 billion in the commercial portfolio.

Outstanding loans and leases excluding loans accounted for under the fair value option decreased \$27.2 billion in the nine months ended September 30, 2020, driven by consumer loans, which decreased \$26.0 billion primarily due to a decline in credit card loans from reduced consumer spending.

The changes in the allowance for credit losses, including net charge-offs and provision for loan and lease losses, are detailed in the table below.

	Consumer Real Estate	Credit Card and Other Consumer	Commercial	Total
(Dollars in millions)				
<b>Three Months Ended September 30, 2020</b>				
<b>Allowance for loan and lease losses, July 1</b>	<b>\$ 833</b>	<b>\$ 10,122</b>	<b>\$ 8,434</b>	<b>\$ 19,389</b>
Loans and leases charged off	(13)	(810)	(470)	(1,293)
Recoveries of loans and leases previously charged off	39	220	62	321
Net charge-offs	26	(590)	(408)	(972)
Provision for loan and lease losses	(6)	304	882	1,180
Other <sup>(1)</sup>	2	—	(3)	(1)
<b>Allowance for loan and lease losses, September 30</b>	<b>855</b>	<b>9,836</b>	<b>8,905</b>	<b>19,596</b>
<b>Reserve for unfunded lending commitments, July 1</b>	<b>141</b>	<b>—</b>	<b>1,561</b>	<b>1,702</b>
Provision for unfunded lending commitments	(3)	—	212	209
Other <sup>(1)</sup>	—	—	(1)	(1)
<b>Reserve for unfunded lending commitments, September 30</b>	<b>138</b>	<b>—</b>	<b>1,772</b>	<b>1,910</b>
<b>Allowance for credit losses, September 30</b>	<b>\$ 993</b>	<b>\$ 9,836</b>	<b>\$ 10,677</b>	<b>\$ 21,506</b>
<b>Three Months Ended September 30, 2019</b>				
<b>Allowance for loan and lease losses, July 1</b>	<b>\$ 719</b>	<b>\$ 3,970</b>	<b>\$ 4,838</b>	<b>\$ 9,527</b>
Loans and leases charged off	(199)	(1,093)	(220)	(1,512)
Recoveries of loans and leases previously charged off	439	231	31	701
Net charge-offs	240	(862)	(189)	(811)
Provision for loan and lease losses	(312)	876	212	776
Other <sup>(1)</sup>	(56)	1	(4)	(59)
<b>Allowance for loan and lease losses, September 30</b>	<b>591</b>	<b>3,985</b>	<b>4,857</b>	<b>9,433</b>
<b>Reserve for unfunded lending commitments, July 1</b>	<b>—</b>	<b>—</b>	<b>806</b>	<b>806</b>
Provision for unfunded lending commitments	—	—	3	3
<b>Reserve for unfunded lending commitments, September 30</b>	<b>—</b>	<b>—</b>	<b>809</b>	<b>809</b>
<b>Allowance for credit losses, September 30</b>	<b>\$ 591</b>	<b>\$ 3,985</b>	<b>\$ 5,666</b>	<b>\$ 10,242</b>
<b>Nine Months Ended September 30, 2020</b>				
<b>Allowance for loan and lease losses, January 1</b>	<b>\$ 440</b>	<b>\$ 7,430</b>	<b>\$ 4,488</b>	<b>\$ 12,358</b>
Loans and leases charged off	(75)	(2,916)	(1,199)	(4,190)
Recoveries of loans and leases previously charged off	147	674	129	950
Net charge-offs	72	(2,242)	(1,070)	(3,240)
Provision for loan and lease losses	336	4,648	5,496	10,480
Other <sup>(1)</sup>	7	—	(9)	(2)
<b>Allowance for loan and lease losses, September 30</b>	<b>855</b>	<b>9,836</b>	<b>8,905</b>	<b>19,596</b>
<b>Reserve for unfunded lending commitments, January 1</b>	<b>119</b>	<b>—</b>	<b>1,004</b>	<b>1,123</b>
Provision for unfunded lending commitments	19	—	768	787
<b>Reserve for unfunded lending commitments, September 30</b>	<b>138</b>	<b>—</b>	<b>1,772</b>	<b>1,910</b>
<b>Allowance for credit losses, September 30</b>	<b>\$ 993</b>	<b>\$ 9,836</b>	<b>\$ 10,677</b>	<b>\$ 21,506</b>
<b>Nine Months Ended September 30, 2019</b>				
<b>Allowance for loan and lease losses, January 1</b>	<b>\$ 928</b>	<b>\$ 3,874</b>	<b>\$ 4,799</b>	<b>\$ 9,601</b>
Loans and leases charged off	(455)	(3,225)	(630)	(4,310)
Recoveries of loans and leases previously charged off	852	680	89	1,621
Net charge-offs	397	(2,545)	(541)	(2,689)
Provision for loan and lease losses	(621)	2,655	603	2,637
Other <sup>(1)</sup>	(113)	1	(4)	(116)
<b>Allowance for loan and lease losses, September 30</b>	<b>591</b>	<b>3,985</b>	<b>4,857</b>	<b>9,433</b>
<b>Reserve for unfunded lending commitments, January 1</b>	<b>—</b>	<b>—</b>	<b>797</b>	<b>797</b>
Provision for unfunded lending commitments	—	—	12	12
<b>Reserve for unfunded lending commitments, September 30</b>	<b>—</b>	<b>—</b>	<b>809</b>	<b>809</b>
<b>Allowance for credit losses, September 30</b>	<b>\$ 591</b>	<b>\$ 3,985</b>	<b>\$ 5,666</b>	<b>\$ 10,242</b>

<sup>(1)</sup> Primarily represents write-offs of purchased credit-impaired loans in 2019, and the net impact of portfolio sales, transfers to held-for-sale and transfers to foreclosed properties.

Specific to the three months ended September 30, 2020, there has been improvement in the U.S. and global macroeconomic consensus outlooks, which resulted in an improvement in the economic outlook used to determine the allowance for credit losses when compared to June 30, 2020. The provision for credit losses, including unfunded lending commitments, increased \$610 million to \$1.4 billion for the three months ended September 30, 2020 compared to the same period in 2019 primarily driven by the reserve build in commercial for high-risk industries such as travel and entertainment, and \$8.6 billion to \$11.3 billion for the nine months ended September 30, 2020 compared to the same period in 2019 driven by deterioration in the economic outlook resulting from the impact of COVID-19. At September 30, 2020, the allowance for credit losses for the Corporation's other relevant assets was insignificant.

## NOTE 6 Securitizations and Other Variable Interest Entities

The Corporation utilizes VIEs in the ordinary course of business to support its own and its customers' financing and investing needs. The tables in this Note present the assets, liabilities and maximum loss exposure of consolidated and unconsolidated VIEs at September 30, 2020 and December 31, 2019 in situations where the Corporation has continuing involvement with transferred assets or if the Corporation otherwise has a variable interest in the VIE. For more information on the Corporation's use of VIEs and related maximum loss exposure, see *Note 1 – Summary of Significant Accounting Principles* and *Note 7 – Securitizations and Other Variable Interest Entities* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

### First-lien Mortgage Securitizations

	Residential Mortgage - Agency				Commercial Mortgage			
	Three Months Ended September 30		Nine Months Ended September 30		Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019	2020	2019	2020	2019
(Dollars in millions)								
Proceeds from loan sales <sup>(1)</sup>	\$ 1,698	\$ 2,718	\$ 14,625	\$ 6,020	\$ 945	\$ 1,360	\$ 3,237	\$ 4,541
Gains (losses) on securitizations <sup>(2)</sup>	3	8	724	23	17	28	57	73
Repurchases from securitization trusts <sup>(3)</sup>	68	209	363	695	—	—	—	—

<sup>(1)</sup> The Corporation transfers residential mortgage loans to securitizations sponsored primarily by the GSEs or Government National Mortgage Association (GNMA) in the normal course of business and primarily receives residential mortgage-backed securities in exchange. Substantially all of these securities are classified as Level 2 within the fair value hierarchy and are typically sold shortly after receipt.

<sup>(2)</sup> A majority of the first-lien residential mortgage loans securitized are initially classified as LHFS and accounted for under the fair value option. Gains recognized on these LHFS prior to securitization, which totaled \$4 million and \$105 million, net of hedges, during the three and nine months ended September 30, 2020 compared to \$19 million and \$38 million for the same periods in 2019, are not included in the table above.

<sup>(3)</sup> The Corporation may have the option to repurchase delinquent loans out of securitization trusts, which reduces the amount of servicing advances it is required to make. The Corporation may also repurchase loans from securitization trusts to perform modifications. Repurchased loans include FHA-insured mortgages collateralizing GNMA securities.

The Corporation recognizes consumer mortgage servicing rights (MSRs) from the sale or securitization of consumer real estate loans. The unpaid principal balance of loans serviced for investors, including residential mortgage and home equity loans, totaled \$172.5 billion and \$201.3 billion at September 30, 2020 and 2019. Servicing fee and ancillary fee income on serviced loans was \$101 million and \$353 million during the three and nine months ended September 30, 2020 compared to \$144 million and \$436 million for the same periods in 2019. Servicing advances on serviced loans, including loans serviced for others and loans held for investment, were \$2.1 billion and \$2.4 billion at September 30, 2020 and December 31, 2019. For more information on MSRs, see *Note 14 – Fair Value Measurements*.

The Corporation invests in ABS issued by third-party VIEs with which it has no other form of involvement and enters into certain commercial lending arrangements that may also incorporate the use of VIEs, for example to hold collateral. These securities and loans are included in *Note 4 – Securities* or *Note 5 – Outstanding Loans and Leases and Allowance for Credit Losses*.

The Corporation did not provide financial support to consolidated or unconsolidated VIEs during the nine months ended September 30, 2020 or the year ended December 31, 2019 that it was not previously contractually required to provide, nor does it intend to do so.

The Corporation had liquidity commitments, including written put options and collateral value guarantees, with certain unconsolidated VIEs of \$918 million and \$1.1 billion at September 30, 2020 and December 31, 2019.

### First-lien Mortgage Securitizations

As part of its mortgage banking activities, the Corporation securitizes a portion of the first-lien residential mortgage loans it originates or purchases from third parties. Except as described in *Note 10 – Commitments and Contingencies*, the Corporation does not provide guarantees or recourse to the securitization trusts other than standard representations and warranties.

The table below summarizes select information related to first-lien mortgage securitizations for the three and nine months ended September 30, 2020 and 2019.

During the three and nine months ended September 30, 2019, the Corporation deconsolidated agency residential mortgage securitization trusts with total assets of \$65 million and \$1.2 billion. During the nine months ended September 30, 2020, the Corporation completed the sale of \$9.3 billion of consumer real estate loans through GNMA loan securitizations. As part of the securitizations, the Corporation retained \$8.4 billion of MBS, which are classified as debt securities carried at fair value on the Consolidated Balance Sheet. Total gains on loan sales of \$704 million were recorded in other income in the Consolidated Statement of Income.

The following table summarizes select information related to first-lien mortgage securitization trusts in which the Corporation held a variable interest at September 30, 2020 and December 31, 2019.

## First-lien Mortgage VIEs

	Residential Mortgage									
	Agency		Prime		Non-agency Subprime		Alt-A		Commercial Mortgage	
	Sep 30 2020	December 31 2019	Sep 30 2020	December 31 2019	Sep 30 2020	December 31 2019	Sep 30 2020	December 31 2019	Sep 30 2020	December 31 2019
(Dollars in millions)										
<b>Unconsolidated VIEs</b>										
<b>Maximum loss exposure <sup>(1)</sup></b>	\$ 14,199	\$ 12,554	\$ 286	\$ 340	\$ 1,440	\$ 1,622	\$ 167	\$ 98	\$ 1,138	\$ 1,036
On-balance sheet assets										
Senior securities:										
Trading account assets	\$ 152	\$ 627	\$ 9	\$ 5	\$ 8	\$ 54	\$ 102	\$ 24	\$ 60	\$ 65
Debt securities carried at fair value	8,337	6,392	156	193	1,071	1,178	64	72	—	—
Held-to-maturity securities	5,710	5,535	—	—	—	—	—	—	887	809
All other assets	—	—	6	2	31	49	1	2	61	38
<b>Total retained positions</b>	\$ 14,199	\$ 12,554	\$ 171	\$ 200	\$ 1,110	\$ 1,281	\$ 167	\$ 98	\$ 1,008	\$ 912
<b>Principal balance outstanding <sup>(2)</sup></b>	\$ 144,735	\$ 160,226	\$ 6,555	\$ 7,268	\$ 6,928	\$ 8,594	\$ 17,478	\$ 19,878	\$ 57,832	\$ 60,129
<b>Consolidated VIEs</b>										
<b>Maximum loss exposure <sup>(1)</sup></b>	\$ 611	\$ 10,857	\$ —	\$ 5	\$ 63	\$ 44	\$ —	\$ —	\$ —	\$ —
On-balance sheet assets										
Trading account assets	\$ 611	\$ 780	\$ 86	\$ 116	\$ 260	\$ 149	\$ —	\$ —	\$ —	\$ —
Loans and leases, net	—	9,917	—	—	—	—	—	—	—	—
All other assets	—	161	—	—	2	—	—	—	—	—
<b>Total assets</b>	\$ 611	\$ 10,858	\$ 86	\$ 116	\$ 262	\$ 149	\$ —	\$ —	\$ —	\$ —
<b>Total liabilities</b>	\$ —	\$ 4	\$ 86	\$ 111	\$ 199	\$ 105	\$ —	\$ —	\$ —	\$ —

<sup>(1)</sup> Maximum loss exposure includes obligations under loss-sharing reinsurance and other arrangements for non-agency residential mortgage and commercial mortgage securitizations, but excludes the reserve for representations and warranties obligations and corporate guarantees and also excludes servicing advances and other servicing rights and obligations. For more information, see *Note 10 – Commitments and Contingencies* and *Note 14 – Fair Value Measurements*.

<sup>(2)</sup> Principal balance outstanding includes loans where the Corporation was the transferor to securitization VIEs with which it has continuing involvement, which may include servicing the loans.

## Other Asset-backed Securitizations

The following table summarizes select information related to home equity, credit card and other asset-backed VIEs in which the Corporation held a variable interest at September 30, 2020 and December 31, 2019.

### Home Equity Loan, Credit Card and Other Asset-backed VIEs

	Home Equity <sup>(1)</sup>		Credit Card <sup>(2)</sup>		Resecuritization Trusts		Municipal Bond Trusts	
	Sep 30 2020	December 31 2019	Sep 30 2020	December 31 2019	Sep 30 2020	December 31 2019	Sep 30 2020	December 31 2019
(Dollars in millions)								
<b>Unconsolidated VIEs</b>								
<b>Maximum loss exposure</b>	\$ 329	\$ 412	\$ —	\$ —	\$ 9,201	\$ 7,526	\$ 3,320	\$ 3,701
On-balance sheet assets								
Securities <sup>(3)</sup> :								
Trading account assets	\$ —	\$ —	\$ —	\$ —	\$ 1,009	\$ 2,188	\$ 3	\$ —
Debt securities carried at fair value	9	11	—	—	2,990	1,126	—	—
Held-to-maturity securities	—	—	—	—	5,202	4,212	—	—
<b>Total retained positions</b>	\$ 9	\$ 11	\$ —	\$ —	\$ 9,201	\$ 7,526	\$ 3	\$ —
Total assets of VIEs	\$ 804	\$ 1,023	\$ —	\$ —	\$ 18,811	\$ 21,234	\$ 3,835	\$ 4,395
<b>Consolidated VIEs</b>								
<b>Maximum loss exposure</b>	\$ 62	\$ 64	\$ 14,770	\$ 17,915	\$ 265	\$ 54	\$ 1,246	\$ 2,656
On-balance sheet assets								
Trading account assets	\$ —	\$ —	\$ —	\$ —	\$ 265	\$ 73	\$ 1,206	\$ 2,480
Loans and leases	122	122	21,793	26,985	—	—	—	—
Allowance for loan and lease losses	15	(2)	(1,824)	(800)	—	—	—	—
All other assets	3	3	93	119	—	—	40	176
<b>Total assets</b>	\$ 140	\$ 123	\$ 20,062	\$ 26,304	\$ 265	\$ 73	\$ 1,246	\$ 2,656
On-balance sheet liabilities								
Short-term borrowings	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 714	\$ 2,175
Long-term debt	78	64	5,273	8,372	—	19	—	—
All other liabilities	—	—	19	17	—	—	—	—
<b>Total liabilities</b>	\$ 78	\$ 64	\$ 5,292	\$ 8,389	\$ —	\$ 19	\$ 714	\$ 2,175

<sup>(1)</sup> For unconsolidated home equity loan VIEs, the maximum loss exposure includes outstanding trust certificates issued by trusts in rapid amortization, net of recorded reserves. For both consolidated and unconsolidated home equity loan VIEs, the maximum loss exposure excludes the reserve for representations and warranties obligations and corporate guarantees. For more information, see *Note 10 – Commitments and Contingencies*.

<sup>(2)</sup> At September 30, 2020 and December 31, 2019, loans and leases in the consolidated credit card trust included \$0.0 billion and \$10.5 billion of seller's interest.

<sup>(3)</sup> The retained senior securities were valued using quoted market prices or observable market inputs (Level 2 of the fair value hierarchy).

### Home Equity Loans

The Corporation retains interests, primarily senior securities, in home equity securitization trusts to which it transferred home equity loans. In addition, the Corporation may be obligated to

provide subordinate funding to the trusts during a rapid amortization event. This obligation is included in the maximum loss exposure in the table above. The charges that will ultimately be recorded as a result of the rapid amortization



events depend on the undrawn portion of the HELOCs, performance of the loans, the amount of subsequent draws and the timing of related cash flows.

### Credit Card Securitizations

The Corporation securitizes originated and purchased credit card loans. The Corporation's continuing involvement with the securitization trust includes servicing the receivables, retaining an undivided interest (seller's interest) in the receivables, and holding certain retained interests including subordinate interests in accrued interest and fees on the securitized receivables and cash reserve accounts.

During the nine months ended September 30, 2019, there were \$1.3 billion of new senior debt securities issued to third-party investors from the credit card securitization trust. There were no new senior debt securities issued to third-party investors from the credit card securitization trust during the nine months ended September 30, 2020.

At September 30, 2020 and December 31, 2019, the Corporation held subordinate securities issued by the credit card securitization trust with a notional principal amount of \$6.9 billion and \$7.4 billion. These securities serve as a form of credit enhancement to the senior debt securities and have a stated interest rate of zero percent. There were \$202 million of these subordinate securities issued by the credit card securitization trust during the nine months ended September 30, 2019. There were no subordinate securities issued by the credit card securitization trust during the nine months ended September 30, 2020.

### Resecuritization Trusts

The Corporation transfers securities, typically MBS, into resecuritization VIEs generally at the request of customers seeking securities with specific characteristics. Generally, there are no significant ongoing activities performed in a resecuritization trust, and no single investor has the unilateral ability to liquidate the trust.

The Corporation resecuritized \$8.3 billion and \$26.4 billion of securities during the three and nine months ended September 30, 2020 compared to \$5.2 billion and \$13.7 billion for the same periods in 2019. Securities transferred into

resecuritization VIEs were measured at fair value with changes in fair value recorded in market making and similar activities prior to the resecuritization and, accordingly, no gain or loss on sale was recorded. Securities received from the resecuritization VIEs were recognized at their fair value of \$598 million and \$5.5 billion during the three and nine months ended September 30, 2020 compared to \$750 million and \$3.5 billion for the same periods in 2019, of which substantially all of the securities in the prior-year period were classified as trading account assets. All of the securities received as resecuritization proceeds during the three months ended September 30, 2020 were classified as trading account assets. Of the securities received as resecuritizations proceeds during the nine months ended September 30, 2020, \$1.8 billion, \$2.1 billion and \$1.7 billion were classified as trading account assets, debt securities carried at fair value and HTM securities, respectively. Substantially all of the trading account securities and debt securities carried at fair value were categorized as Level 2 within the fair value hierarchy.

### Municipal Bond Trusts

The Corporation administers municipal bond trusts that hold highly-rated, long-term, fixed-rate municipal bonds. The trusts obtain financing by issuing floating-rate trust certificates that reprice on a weekly or other short-term basis to third-party investors.

The Corporation's liquidity commitments to unconsolidated municipal bond trusts, including those for which the Corporation was transferor, totaled \$3.3 billion and \$3.7 billion at September 30, 2020 and December 31, 2019. The weighted-average remaining life of bonds held in the trusts at September 30, 2020 was 6.9 years. There were no significant write-downs or downgrades of assets or issuers during the nine months ended September 30, 2020 and 2019.

### Other Variable Interest Entities

The table below summarizes select information related to other VIEs in which the Corporation held a variable interest at September 30, 2020 and December 31, 2019.

### Other VIEs

	Consolidated		Unconsolidated		Total		Consolidated		Unconsolidated		Total	
(Dollars in millions)	September 30, 2020						December 31, 2019					
Maximum loss exposure	\$	4,162	\$	26,192	\$	30,354	\$	4,055	\$	26,326	\$	30,381
On-balance sheet assets												
Trading account assets	\$	2,064	\$	601	\$	2,665	\$	2,213	\$	549	\$	2,762
Debt securities carried at fair value		—		74		74		—		74		74
Loans and leases		2,179		3,036		5,215		1,810		3,214		5,024
Allowance for loan and lease losses		(3)		(182)		(185)		(2)		(38)		(40)
All other assets		53		21,957		22,010		81		20,547		20,628
Total	\$	4,293	\$	25,486	\$	29,779	\$	4,102	\$	24,346	\$	28,448
On-balance sheet liabilities												
Short-term borrowings	\$	25	\$	—	\$	25	\$	—	\$	—	\$	—
Long-term debt		106		—		106		46		—		46
All other liabilities		—		5,383		5,383		2		5,087		5,089
Total	\$	131	\$	5,383	\$	5,514	\$	48	\$	5,087	\$	5,135
Total assets of VIEs	\$	4,293	\$	105,922	\$	110,215	\$	4,102	\$	98,491	\$	102,593

### Customer VIEs

Customer VIEs include credit-linked, equity-linked and commodity-linked note VIEs, repackaging VIEs and asset acquisition VIEs, which are typically created on behalf of customers who wish to obtain market or credit exposure to a specific company, index, commodity or financial instrument.

The Corporation's maximum loss exposure to consolidated and unconsolidated customer VIEs totaled \$2.4 billion and \$2.2 billion at September 30, 2020 and December 31, 2019, including the notional amount of derivatives to which the Corporation is a counterparty, net of losses previously recorded, and the Corporation's investment, if any, in securities issued by the VIEs.



### Collateralized Debt Obligation VIEs

The Corporation receives fees for structuring CDO VIEs, which hold diversified pools of fixed-income securities, typically corporate debt or ABS, which the CDO VIEs fund by issuing multiple tranches of debt and equity securities. CDOs are generally managed by third-party portfolio managers. The Corporation typically transfers assets to these CDOs, holds securities issued by the CDOs and may be a derivative counterparty to the CDOs. The Corporation's maximum loss exposure to consolidated and unconsolidated CDOs totaled \$252 million and \$304 million at September 30, 2020 and December 31, 2019.

### Investment VIEs

The Corporation sponsors, invests in or provides financing, which may be in connection with the sale of assets, to a variety of investment VIEs that hold loans, real estate, debt securities or other financial instruments and are designed to provide the desired investment profile to investors or the Corporation. At September 30, 2020 and December 31, 2019, the Corporation's consolidated investment VIEs had total assets of \$552 million and \$104 million. The Corporation also held investments in unconsolidated VIEs with total assets of \$37.3 billion and \$32.4 billion at September 30, 2020 and December 31, 2019. The Corporation's maximum loss exposure associated with both consolidated and unconsolidated investment VIEs totaled \$5.9 billion and \$6.4 billion at September 30, 2020 and December 31, 2019 comprised primarily of on-balance sheet assets less non-recourse liabilities.

### Leveraged Lease Trusts

The Corporation's net investment in consolidated leveraged lease trusts totaled \$1.7 billion at both September 30, 2020 and December 31, 2019. The trusts hold long-lived equipment such as rail cars, power generation and distribution equipment, and commercial aircraft. The Corporation structures the trusts and holds a significant residual interest. The net investment represents the Corporation's maximum loss exposure to the trusts in the unlikely event that the leveraged lease investments become worthless. Debt issued by the leveraged lease trusts is non-recourse to the Corporation.

### Tax Credit VIEs

The Corporation holds investments in unconsolidated limited partnerships and similar entities that construct, own and operate affordable housing, wind and solar projects. An unrelated third party is typically the general partner or managing member and has control over the significant activities of the VIE. The Corporation earns a return primarily through the receipt of tax credits allocated to the projects. The maximum loss exposure included in the Other VIEs table was \$20.0 billion and \$18.9 billion at September 30, 2020 and December 31, 2019. The Corporation's risk of loss is generally mitigated by policies requiring that the project qualify for the expected tax credits prior to making its investment.

The Corporation's investments in affordable housing partnerships, which are reported in other assets on the Consolidated Balance Sheet, totaled \$10.6 billion and \$10.0 billion, including unfunded commitments to provide capital contributions of \$4.8 billion and \$4.3 billion at September 30, 2020 and December 31, 2019. The unfunded commitments are expected to be paid over the next five years. The Corporation

recognized tax credits and other tax benefits from investments in affordable housing partnerships of \$376 million and \$986 million and reported pretax losses in other income of \$272 million and \$799 million for the three and nine months ended September 30, 2020. For the same periods in 2019, the Corporation recognized tax credits and other tax benefits of \$276 million and \$847 million and reported pretax losses in other income of \$250 million and \$732 million. Tax credits are recognized as part of the Corporation's annual effective tax rate used to determine tax expense in a given quarter. Accordingly, the portion of a year's expected tax benefits recognized in any given quarter may differ from 25 percent. The Corporation may from time to time be asked to invest additional amounts to support a troubled affordable housing project. Such additional investments have not been and are not expected to be significant.

## NOTE 7 Goodwill and Intangible Assets

### Goodwill

The table below presents goodwill balances by business segment and *All Other* at September 30, 2020 and December 31, 2019. The reporting units utilized for goodwill impairment testing are the operating segments or one level below.

#### Goodwill

	September 30 2020	December 31 2019
(Dollars in millions)		
Consumer Banking	\$ 30,123	\$ 30,123
Global Wealth & Investment Management	9,677	9,677
Global Banking	23,923	23,923
Global Markets	5,182	5,182
All Other	46	46
<b>Total goodwill</b>	<b>\$ 68,951</b>	<b>\$ 68,951</b>

### Intangible Assets

At September 30, 2020 and December 31, 2019, the net carrying value of intangible assets was \$2.2 billion and \$1.7 billion. During the three months ended September 30, 2020, the Corporation recognized a \$585 million intangible asset, which is being amortized over a 10-year life, related to the merchant contracts that were distributed to the Corporation from its merchant servicing joint venture. For more information, see *Note 10 – Commitments and Contingencies*.

At September 30, 2020 and December 31, 2019, intangible assets included \$1.6 billion of intangible assets associated with trade names, substantially all of which had an indefinite life and, accordingly, are not being amortized. Amortization of intangibles expense was \$30 million and \$62 million for the three and nine months ended September 30, 2020 compared to \$29 million and \$84 million for the same periods in 2019.

## NOTE 8 Leases

The Corporation enters into both lessor and lessee arrangements. For more information on lease accounting, see *Note 1 – Summary of Significant Accounting Principles* and *Note 9 – Leases* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K. For more information on lease financing receivables, see *Note 5 – Outstanding Loans and Leases and Allowance for Credit Losses*.

## Lessor Arrangements

The Corporation's lessor arrangements primarily consist of operating, sales-type and direct financing leases for equipment. Lease agreements may include options to renew and for the lessee to purchase the leased equipment at the end of the lease term.

At September 30, 2020 and December 31, 2019, the total net investment in sales-type and direct financing leases was \$19.9 billion and \$21.9 billion, comprised of \$17.6 billion and \$19.3 billion in lease receivables and \$2.3 billion and \$2.6 billion in unguaranteed residuals. In certain cases, the Corporation obtains third-party residual value insurance to reduce its residual asset risk. The carrying value of residual assets with third-party residual value insurance for at least a portion of the asset value was \$6.6 billion and \$5.8 billion at September 30, 2020 and December 31, 2019.

The following table presents total lease income for the three and nine months ended September 30, 2020 and 2019.

## Lease Income

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
Sales-type and direct financing leases	\$ 167	\$ 198	\$ 539	\$ 601
Operating leases	224	227	703	663
Total lease income	\$ 391	\$ 425	\$ 1,242	\$ 1,264

## Lessee Arrangements

The Corporation's lessee arrangements predominantly consist of operating leases for premises and equipment; the Corporation's financing leases are not significant. Right-of-use assets were \$9.9 billion and \$9.7 billion and lease liabilities were \$10.3 billion and \$10.1 billion at September 30, 2020 and December 31, 2019.

## NOTE 9 Federal Funds Sold or Purchased, Securities Financing Agreements, Short-term Borrowings and Restricted Cash

The table below presents federal funds sold or purchased, securities financing agreements (which include securities borrowed or purchased under agreements to resell and securities loaned or sold under agreements to repurchase) and short-term borrowings. The Corporation elects to account for certain securities financing agreements and short-term borrowings under the fair value option. For more information on the fair value option, see *Note 15 – Fair Value Option*.

	Amount	Rate	Amount	Rate	Amount	Rate	Amount	Rate
	Three Months Ended September 30				Nine Months Ended September 30			
	2020		2019		2020		2019	
(Dollars in millions)								
<b>Federal funds sold and securities borrowed or purchased under agreements to resell</b>								
Average during period	\$ 384,221	0.06 %	\$ 269,129	1.83 %	\$ 325,356	0.37 %	\$ 274,822	1.82 %
Maximum month-end balance during period	420,830	n/a	278,514	n/a	451,179	n/a	280,562	n/a
<b>Federal funds purchased and securities loaned or sold under agreements to repurchase</b>								
Average during period	\$ 192,376	0.41 %	\$ 203,702	2.35 %	\$ 193,029	0.81 %	\$ 202,632	2.43 %
Maximum month-end balance during period	195,028	n/a	202,208	n/a	206,493	n/a	203,063	n/a
<b>Short-term borrowings</b>								
Average during period	17,770	0.08	26,579	2.29	23,347	0.68	21,728	2.62
Maximum month-end balance during period	19,530	n/a	30,682	n/a	30,118	n/a	30,682	n/a

n/a = not applicable

## Offsetting of Securities Financing Agreements

The Corporation enters into securities financing agreements to accommodate customers (also referred to as "matched-book transactions"), obtain securities to cover short positions and finance inventory positions. For more information on the securities financing agreements and the offsetting of securities financing transactions, see *Note 11 – Federal Funds Sold or Purchased, Securities Financing Agreements, Short-term Borrowings and Restricted Cash* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

The Securities Financing Agreements table presents securities financing agreements included on the Consolidated Balance Sheet in federal funds sold and securities borrowed or purchased under agreements to resell, and in federal funds purchased and securities loaned or sold under agreements to repurchase at September 30, 2020 and December 31, 2019. Balances are presented on a gross basis, prior to the application of counterparty netting. Gross assets and liabilities are adjusted on an aggregate basis to take into consideration the effects of legally enforceable master netting agreements. For more information on the offsetting of derivatives, see *Note 3 – Derivatives*.

## Securities Financing Agreements

	Gross Assets/Liabilities <sup>(1)</sup>	Amounts Offset	Net Balance Sheet Amount	Financial Instruments <sup>(2)</sup>	Net Assets/Liabilities
September 30, 2020					
Securities borrowed or purchased under agreements to resell <sup>(3)</sup>	\$ 541,040	\$ (214,295)	\$ 326,745	\$ (300,403)	\$ 26,342
Securities loaned or sold under agreements to repurchase	\$ 405,064	\$ (214,295)	\$ 190,769	\$ (179,875)	\$ 10,894
Other <sup>(4)</sup>	12,644	—	12,644	(12,644)	—
<b>Total</b>	<b>\$ 417,708</b>	<b>\$ (214,295)</b>	<b>\$ 203,413</b>	<b>\$ (192,519)</b>	<b>\$ 10,894</b>
December 31, 2019					
Securities borrowed or purchased under agreements to resell <sup>(3)</sup>	\$ 434,257	\$ (159,660)	\$ 274,597	\$ (244,486)	\$ 30,111
Securities loaned or sold under agreements to repurchase	\$ 324,769	\$ (159,660)	\$ 165,109	\$ (141,482)	\$ 23,627
Other <sup>(4)</sup>	15,346	—	15,346	(15,346)	—
<b>Total</b>	<b>\$ 340,115</b>	<b>\$ (159,660)</b>	<b>\$ 180,455</b>	<b>\$ (156,828)</b>	<b>\$ 23,627</b>

<sup>(1)</sup> Includes activity where uncertainty exists as to the enforceability of certain master netting agreements under bankruptcy laws in some countries or industries.

<sup>(2)</sup> Includes securities collateral received or pledged under repurchase or securities lending agreements where there is a legally enforceable master netting agreement. These amounts are not offset on the Consolidated Balance Sheet, but are shown as a reduction to derive a net asset or liability. Securities collateral received or pledged where the legal enforceability of the master netting agreements is uncertain is excluded from the table.

<sup>(3)</sup> Excludes repurchase activity of \$15.2 billion and \$12.9 billion reported in loans and leases on the Consolidated Balance Sheet at September 30, 2020 and December 31, 2019.

<sup>(4)</sup> Balance is reported in accrued expenses and other liabilities on the Consolidated Balance Sheet and relates to transactions where the Corporation acts as the lender in a securities lending agreement and receives securities that can be pledged as collateral or sold. In these transactions, the Corporation recognizes an asset at fair value, representing the securities received, and a liability, representing the obligation to return those securities.

## Repurchase Agreements and Securities Loaned Transactions Accounted for as Secured Borrowings

The following tables present securities sold under agreements to repurchase and securities loaned by remaining contractual term to maturity and class of collateral pledged. Included in "Other" are transactions where the Corporation acts as the lender in a securities lending agreement and receives securities that can be pledged as collateral or sold. Certain agreements contain a right to substitute collateral and/or terminate the

agreement prior to maturity at the option of the Corporation or the counterparty. Such agreements are included in the table below based on the remaining contractual term to maturity. For more information on collateral requirements, see *Note 11 – Federal Funds Sold or Purchased, Securities Financing Agreements, Short-term Borrowings and Restricted Cash* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

## Remaining Contractual Maturity

	Overnight and Continuous	30 Days or Less	After 30 Days Through 90 Days	Greater than 90 Days <sup>(1)</sup>	Total
September 30, 2020					
Securities sold under agreements to repurchase	\$ 199,516	\$ 108,084	\$ 23,509	\$ 48,913	\$ 380,022
Securities loaned	20,284	16	427	4,315	25,042
Other	12,644	—	—	—	12,644
<b>Total</b>	<b>\$ 232,444</b>	<b>\$ 108,100</b>	<b>\$ 23,936</b>	<b>\$ 53,228</b>	<b>\$ 417,708</b>
December 31, 2019					
Securities sold under agreements to repurchase	\$ 129,455	\$ 122,685	\$ 25,322	\$ 21,922	\$ 299,384
Securities loaned	18,766	3,329	1,241	2,049	25,385
Other	15,346	—	—	—	15,346
<b>Total</b>	<b>\$ 163,567</b>	<b>\$ 126,014</b>	<b>\$ 26,563</b>	<b>\$ 23,971</b>	<b>\$ 340,115</b>

<sup>(1)</sup> No agreements have maturities greater than three years.

## Class of Collateral Pledged

	Securities Sold Under Agreements to Repurchase	Securities Loaned	Other	Total
September 30, 2020				
U.S. government and agency securities	\$ 211,538	\$ —	\$ —	\$ 211,538
Corporate securities, trading loans and other	12,177	1,763	786	14,726
Equity securities	14,495	22,635	11,800	48,930
Non-U.S. sovereign debt	138,518	644	58	139,220
Mortgage trading loans and ABS	3,294	—	—	3,294
<b>Total</b>	<b>\$ 380,022</b>	<b>\$ 25,042</b>	<b>\$ 12,644</b>	<b>\$ 417,708</b>
December 31, 2019				
U.S. government and agency securities	\$ 173,533	\$ 1	\$ —	\$ 173,534
Corporate securities, trading loans and other	10,467	2,014	258	12,739
Equity securities	14,933	20,026	15,024	49,983
Non-U.S. sovereign debt	96,576	3,344	64	99,984
Mortgage trading loans and ABS	3,875	—	—	3,875
<b>Total</b>	<b>\$ 299,384</b>	<b>\$ 25,385</b>	<b>\$ 15,346</b>	<b>\$ 340,115</b>

## Restricted Cash

At September 30, 2020 and December 31, 2019, the Corporation held restricted cash included within cash and cash equivalents on the Consolidated Balance Sheet of \$6.5 billion and \$24.4 billion, predominantly related to cash held on deposit with the Federal Reserve Bank and non-U.S. central banks to meet reserve requirements and cash segregated in compliance with securities regulations.

## NOTE 10 Commitments and Contingencies

In the normal course of business, the Corporation enters into a number of off-balance sheet commitments. These commitments expose the Corporation to varying degrees of credit and market risk and are subject to the same credit and market risk limitation reviews as those instruments recorded on the Consolidated Balance Sheet. For more information on commitments and contingencies, see *Note 13 – Commitments and Contingencies* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

### Credit Extension Commitments

The Corporation enters into commitments to extend credit such as loan commitments, SBLCs and commercial letters of credit to meet the financing needs of its customers. The following table includes the notional amount of unfunded legally binding lending commitments net of amounts distributed (i.e.,

syndicated or participated) to other financial institutions. The distributed amounts were \$10.3 billion and \$10.6 billion at September 30, 2020 and December 31, 2019. At September 30, 2020, the carrying value of these commitments, excluding commitments accounted for under the fair value option, was \$1.9 billion, including deferred revenue of \$17 million and a reserve for unfunded lending commitments of \$1.9 billion. At December 31, 2019, the comparable amounts were \$829 million, \$16 million and \$813 million, respectively. The carrying value of these commitments is classified in accrued expenses and other liabilities on the Consolidated Balance Sheet.

Legally binding commitments to extend credit generally have specified rates and maturities. Certain of these commitments have adverse change clauses that help to protect the Corporation against deterioration in the borrower's ability to pay.

The table below includes the notional amount of commitments of \$3.3 billion and \$4.4 billion at September 30, 2020 and December 31, 2019 that are accounted for under the fair value option. However, the table excludes cumulative net fair value of \$122 million and \$90 million at September 30, 2020 and December 31, 2019 on these commitments, which is classified in accrued expenses and other liabilities. For more information regarding the Corporation's loan commitments accounted for under the fair value option, see *Note 15 – Fair Value Option*.

### Credit Extension Commitments

	Expire in One Year or Less	Expire After One Year Through Three Years	Expire After Three Years Through Five Years	Expire After Five Years	Total
(Dollars in millions)					
<b>September 30, 2020</b>					
<b>Notional amount of credit extension commitments</b>					
Loan commitments <sup>(1)</sup>	\$ 107,984	\$ 159,452	\$ 145,645	\$ 13,290	\$ 426,371
Home equity lines of credit	697	2,672	8,237	31,889	43,495
Standby letters of credit and financial guarantees <sup>(2)</sup>	21,648	11,145	2,532	1,133	36,458
Letters of credit <sup>(3)</sup>	825	224	33	32	1,114
Legally binding commitments	131,154	173,493	156,447	46,344	507,438
Credit card lines <sup>(4)</sup>	387,059	—	—	—	387,059
<b>Total credit extension commitments</b>	<b>\$ 518,213</b>	<b>\$ 173,493</b>	<b>\$ 156,447</b>	<b>\$ 46,344</b>	<b>\$ 894,497</b>
<b>December 31, 2019</b>					
<b>Notional amount of credit extension commitments</b>					
Loan commitments <sup>(1)</sup>	\$ 97,454	\$ 148,000	\$ 173,699	\$ 24,487	\$ 443,640
Home equity lines of credit	1,137	1,948	6,351	34,134	43,570
Standby letters of credit and financial guarantees <sup>(2)</sup>	21,311	11,512	3,712	408	36,943
Letters of credit <sup>(3)</sup>	1,156	254	65	25	1,500
Legally binding commitments	121,058	161,714	183,827	59,054	525,653
Credit card lines <sup>(4)</sup>	376,067	—	—	—	376,067
<b>Total credit extension commitments</b>	<b>\$ 497,125</b>	<b>\$ 161,714</b>	<b>\$ 183,827</b>	<b>\$ 59,054</b>	<b>\$ 901,720</b>

<sup>(1)</sup> At both September 30, 2020 and December 31, 2019, \$5.1 billion of these loan commitments were held in the form of a security.

<sup>(2)</sup> The notional amounts of SBLCs and financial guarantees classified as investment grade and non-investment grade based on the credit quality of the underlying reference name within the instrument were \$5.4 billion and \$10.5 billion at September 30, 2020, and \$27.9 billion and \$8.6 billion at December 31, 2019. Amounts in the table include consumer SBLCs of \$21 million and \$413 million at September 30, 2020 and December 31, 2019.

<sup>(3)</sup> At September 30, 2020 and December 31, 2019, included are letters of credit of \$1.7 billion and \$1.4 billion related to certain liquidity commitments of VIEs. For more information, see *Note 6 – Securitizations and Other Variable Interest Entities*.

<sup>(4)</sup> Includes business card unused lines of credit.

### Other Commitments

At September 30, 2020 and December 31, 2019, the Corporation had commitments to purchase loans (e.g., residential mortgage and commercial real estate) of \$169 million and \$86 million, which upon settlement will be included in trading account assets, loans or LHFS, and commitments to purchase commercial loans of \$365 million and \$1.1 billion, which upon settlement will be included in trading account assets.

At September 30, 2020 and December 31, 2019, the Corporation had commitments to purchase commodities, primarily liquefied natural gas, of \$539 million and \$830 million, which upon settlement will be included in trading account assets.

At September 30, 2020 and December 31, 2019, the Corporation had commitments to enter into resale and forward-dated resale and securities borrowing agreements of \$127.7 billion and \$97.2 billion, and commitments to enter into forward-dated repurchase and securities lending agreements of \$68.7

billion and \$24.9 billion. These commitments generally expire within the next 12 months.

At September 30, 2020 and December 31, 2019, the Corporation had a commitment to originate or purchase up to \$3.8 billion and \$3.3 billion on a rolling 12-month basis, of auto loans and leases from a strategic partner. This commitment extends through November 2022 and can be terminated with 12 months prior notice.

## Other Guarantees

### **Bank-owned Life Insurance Book Value Protection**

The Corporation sells products that offer book value protection to insurance carriers who offer group life insurance policies to corporations, primarily banks. At September 30, 2020 and December 31, 2019, the notional amount of these guarantees totaled \$7.1 billion and \$7.3 billion. At both September 30, 2020 and December 31, 2019, the Corporation's maximum exposure related to these guarantees totaled \$1.1 billion, with estimated maturity dates between 2033 and 2039.

### **Merchant Services**

Prior to July 1, 2020, a significant portion of the Corporation's merchant processing activity was performed by a joint venture in which it held a 49 percent ownership interest. On July 29, 2019, the Corporation gave notice to the joint venture partner of the termination of the joint venture upon the conclusion of its current term on June 30, 2020. Effective July 1, 2020, the Corporation received its share of the joint venture's merchant contracts and began performing merchant processing services for these merchants. While merchants bear responsibility for any credit or debit card charges properly reversed by the cardholder, the Corporation, in its role as merchant acquirer, may be held liable for any reversed charges that cannot be collected from the merchants due to, among other things, merchant fraud or insolvency.

The Corporation, as a card network member bank, also sponsors other merchant acquirers, principally its former joint venture partner with respect to merchants distributed to that partner upon the termination of the joint venture. If reversed charges applicable to these merchants cannot be collected from either the merchants or merchant acquirers, the Corporation may be held liable for these reversed charges. The Corporation's risk in this area primarily relates to circumstances where a cardholder has purchased goods or services for future delivery. The Corporation mitigates this risk by requiring cash deposits, guarantees, letters of credit or other types of collateral from certain merchants. The total amount of transactions processed for the preceding six-month period, which was \$311.7 billion, is an estimate of the Corporation's maximum potential exposure as of September 30, 2020. However, for the reasons described above, the Corporation does not believe the maximum potential exposure is representative of the actual potential loss exposure. At September 30, 2020 and 2019, the Corporation's reserves for contingent losses and the losses incurred related to the merchant processing activity were not significant. The Corporation will continue to monitor its exposure in this area due to the potential economic impacts of COVID-19.

## **Representations and Warranties Obligations and Corporate Guarantees**

For more information on representations and warranties obligations and corporate guarantees, see *Note 13 – Commitments and Contingencies* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

The reserve for representations and warranties obligations and corporate guarantees was \$1.4 billion and \$1.8 billion at September 30, 2020 and December 31, 2019 and is included in accrued expenses and other liabilities on the Consolidated Balance Sheet and the related provision is included in other income in the Consolidated Statement of Income. The representations and warranties reserve represents the Corporation's best estimate of probable incurred losses, is based on our experience in previous negotiations, and is subject to judgment, a variety of assumptions, and known or unknown uncertainties. Future representations and warranties losses may occur in excess of the amounts recorded for these exposures; however, the Corporation does not expect such amounts to be material to the Corporation's financial condition and liquidity. See *Litigation and Regulatory Matters* below for the Corporation's combined range of possible loss in excess of the reserve for representations and warranties and the accrued liability for litigation.

### **Fixed Income Clearing Corporation Sponsored Member Repo Program**

The Corporation acts as a sponsoring member in a repo program whereby the Corporation clears certain eligible resale and repurchase agreements through the Government Securities Division of the Fixed Income Clearing Corporation on behalf of clients that are sponsored members in accordance with the Fixed Income Clearing Corporation's rules. As part of this program, the Corporation guarantees the payment and performance of its sponsored members to the Fixed Income Clearing Corporation. The Corporation's guarantee obligation is secured by a security interest in cash or high-quality securities collateral placed by clients with the clearinghouse and therefore, the potential for the Corporation to incur significant losses under this arrangement is remote. The Corporation's maximum potential exposure, without taking into consideration the related collateral, was \$8.0 billion and \$9.3 billion at September 30, 2020 and December 31, 2019.

### **Other Guarantees**

The Corporation has entered into additional guarantee agreements and commitments, including sold risk participation swaps, liquidity facilities, lease-end obligation agreements, partial credit guarantees on certain leases, real estate joint venture guarantees, divested business commitments and sold put options that require gross settlement. The maximum potential future payments under these agreements are approximately \$9.0 billion and \$8.7 billion at September 30, 2020 and December 31, 2019. The estimated maturity dates of these obligations extend up to 2049. The Corporation has made no material payments under these guarantees. For more information on maximum potential future payments under VIE-related liquidity commitments, see *Note 6 – Securitizations and Other Variable Interest Entities*.

In the normal course of business, the Corporation periodically guarantees the obligations of its affiliates in a variety of transactions including ISDA-related transactions and non-ISDA related transactions such as commodities trading, repurchase agreements, prime brokerage agreements and other transactions.

#### **Guarantees of Certain Long-term Debt**

The Corporation, as the parent company, fully and unconditionally guarantees the securities issued by BofA Finance LLC, a 100 percent owned finance subsidiary of the Corporation, and effectively provides for the full and unconditional guarantee of trust securities issued by certain statutory trust companies that are 100 percent owned finance subsidiaries of the Corporation.

#### **Litigation and Regulatory Matters**

The following disclosure supplements the disclosure in *Note 13 – Commitments and Contingencies* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K (the prior commitments and contingencies disclosure).

In the ordinary course of business, the Corporation and its subsidiaries are routinely defendants in or parties to many pending and threatened legal, regulatory and governmental actions and proceedings. In view of the inherent difficulty of predicting the outcome of such matters, particularly where the claimants seek very large or indeterminate damages or where the matters present novel legal theories or involve a large number of parties, the Corporation generally cannot predict the eventual outcome of the pending matters, the timing of the ultimate resolution of these matters, or any eventual loss, fines or penalties related to each pending matter.

In accordance with applicable accounting guidance, the Corporation establishes an accrued liability when those matters present loss contingencies that are both probable and estimable. In such cases, there may be an exposure to loss in excess of any amounts accrued. As a matter develops, the Corporation, in conjunction with any outside counsel handling the matter, evaluates on an ongoing basis whether such matter presents a loss contingency that is probable and estimable. Once the loss contingency is deemed to be both probable and estimable, the Corporation will establish an accrued liability and record a corresponding amount of litigation-related expense. The Corporation continues to monitor the matter for further developments that could affect the amount of the accrued liability that has been previously established. Excluding expenses of internal and external legal service providers, litigation-related expense of \$636 million and \$717 million was recognized for the three and nine months ended September 30, 2020 compared to \$352 million and \$539 million for the same periods in 2019.

For a limited number of the matters disclosed in the prior commitments and contingencies disclosure, for which a loss, whether in excess of a related accrued liability or where there is no accrued liability, is reasonably possible in future periods, the Corporation is able to estimate a range of possible loss. In determining whether it is possible to estimate a range of possible loss, the Corporation reviews and evaluates these matters on an ongoing basis, in conjunction with any outside counsel handling the matter, in light of potentially relevant factual and legal developments. With respect to such matters, in cases in which the Corporation possesses sufficient appropriate information to estimate a range of possible loss, that estimate is aggregated and disclosed below. There may be other disclosed matters for which a loss is probable or

reasonably possible but such an estimate of the range of possible loss may not be possible. For those disclosed matters where an estimate of the range of possible loss is possible, as well as for representations and warranties exposures, management currently estimates the aggregate range of reasonably possible loss for these exposures is \$0 to \$1.3 billion in excess of the accrued liability, if any.

The estimated range of possible loss, as well as the Corporation's accrued liability, is based upon currently available information and is subject to significant judgment, a variety of assumptions and known and unknown uncertainties. The matters underlying the estimated range of possible loss and liability accrual are unpredictable and will change from time to time, and actual losses may vary significantly from the current estimate or accrual. Therefore, this estimated range of possible loss represents what the Corporation believes to be an estimate of possible loss only for certain matters meeting these criteria. It does not represent the Corporation's maximum loss exposure.

Information is provided in the prior commitments and contingencies disclosure regarding the nature of the litigation and, where specified, associated claimed damages. Based on current knowledge, and taking into account accrued liabilities, management does not believe that loss contingencies arising from pending matters in the prior commitments and contingencies disclosure will have a material adverse effect on the consolidated financial condition or liquidity of the Corporation. However, in light of the significant judgment, variety of assumptions and uncertainties involved in these matters, some of which are beyond the Corporation's control, and the very large or indeterminate damages sought in some of these matters, an adverse outcome in one or more of these matters could be material to the Corporation's businesses or results of operations for any particular reporting period, or cause significant reputational harm.

### **NOTE 11 Shareholders' Equity**

#### **Common Stock**

##### **Declared Quarterly Cash Dividends on Common Stock<sup>(1)</sup>**

Declaration Date	Record Date	Payment Date	Dividend Per Share
October 21, 2020	December 4, 2020	December 24, 2020	\$ 0.18
July 22, 2020	September 4, 2020	September 25, 2020	0.18
April 22, 2020	June 5, 2020	June 26, 2020	0.18
January 29, 2020	March 6, 2020	March 27, 2020	0.18

<sup>(1)</sup> In 2020, and through October 30, 2020.

In June 2020, the Board of Governors of the Federal Reserve System (Federal Reserve) announced that due to economic uncertainty resulting from COVID-19, all large banks would be required to suspend share repurchase programs in the third quarter of 2020, except for repurchases to offset shares awarded under equity-based compensation plans, and to limit dividends to existing rates that do not exceed the average of the last four quarters' net income.

The Federal Reserve's directives regarding share repurchases aligned with the Corporation's decision to voluntarily suspend repurchases during the first half of 2020. The suspension of the Corporation's repurchases did not include repurchases to offset shares awarded under its equity-based compensation plans.

During the three and nine months ended September 30, 2020, the Corporation repurchased and retired 4 million and 216 million shares of common stock, which reduced shareholders' equity by \$114 million and \$6.8 billion.

During the nine months ended September 30, 2020, in connection with employee stock plans, the Corporation issued 66 million shares of its common stock and, to satisfy tax withholding obligations, repurchased 26 million shares of its common stock. At September 30, 2020, the Corporation had reserved 513 million unissued shares of common stock for future issuances under employee stock plans, convertible notes and preferred stock.

On October 21, 2020 the Board declared a quarterly common stock dividend at the current rate of \$0.18 per share.

## Preferred Stock

During the three months ended March 31, 2020, June 30, 2020 and September 30, 2020, the Corporation declared \$469 million, \$249 million and \$441 million of cash dividends on preferred stock, or a total of \$1.2 billion for the nine months ended September 30, 2020. On October 29, 2020, the

Corporation issued 44,000 shares of 4.375% Non-Cumulative Preferred Stock, Series NN for \$1.1 billion, with quarterly dividends commencing in February 2021. The Series NN preferred stock has a liquidation preference of \$25,000 per share and is subject to certain restrictions in the event the Corporation fails to declare and pay full dividends. For more information on the Corporation's preferred stock, including liquidation preference, dividend requirements and redemption period, see *Note 14 – Shareholders' Equity* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

## NOTE 12 Earnings Per Common Share

The calculation of earnings per common share (EPS) and diluted EPS for the three and nine months ended September 30, 2020 and 2019 is presented on the following page. For more information on the calculation of EPS, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(In millions, except per share information)				
<b>Earnings per common share</b>				
Net income	\$ 4,881	\$ 5,777	\$ 12,424	\$ 20,436
Preferred stock dividends	(441)	(505)	(1,159)	(1,186)
Net income applicable to common shareholders	\$ 4,440	\$ 5,272	\$ 11,265	\$ 19,250
Average common shares issued and outstanding	8,732.9	9,303.6	8,762.6	9,516.2
<b>Earnings per common share</b>	<b>\$ 0.51</b>	<b>\$ 0.57</b>	<b>\$ 1.29</b>	<b>\$ 2.02</b>
<b>Diluted earnings per common share</b>				
Net income applicable to common shareholders	\$ 4,440	\$ 5,272	\$ 11,265	\$ 19,250
Average common shares issued and outstanding	8,732.9	9,303.6	8,762.6	9,516.2
Dilutive potential common shares <sup>(1)</sup>	44.6	49.4	37.9	49.5
Total diluted average common shares issued and outstanding	8,777.5	9,353.0	8,800.5	9,565.7
<b>Diluted earnings per common share</b>	<b>\$ 0.51</b>	<b>\$ 0.56</b>	<b>\$ 1.28</b>	<b>\$ 2.01</b>

<sup>(1)</sup> Includes incremental dilutive shares from restricted stock units, restricted stock and warrants.

For both the three and nine months ended September 30, 2020 and 2019, 62 million average dilutive potential common shares associated with the Series L preferred stock were not included in the diluted share count because the result would have been antidilutive under the "if-converted" method.

## NOTE 13 Accumulated Other Comprehensive Income (Loss)

The table below presents the changes in accumulated OCI after-tax for the nine months ended September 30, 2020 and 2019.

(Dollars in millions)	Debt Securities	Debit Valuation Adjustments	Derivatives	Employee Benefit Plans	Foreign Currency	Total
<b>Balance, December 31, 2019</b>	\$ 323	\$ (1,494)	\$ (400)	\$ (4,168)	\$ (894)	\$ (6,633)
Net change	4,794	(5)	808	144	(86)	5,655
<b>Balance, September 30, 2020</b>	<b>\$ 5,117</b>	<b>\$ (1,499)</b>	<b>\$ 408</b>	<b>\$ (4,024)</b>	<b>\$ (980)</b>	<b>\$ (978)</b>
<b>Balance, December 31, 2018</b>	\$ (5,552)	\$ (531)	\$ (1,016)	\$ (4,304)	\$ (808)	\$ (12,211)
Net change	6,231	(272)	651	83	(99)	6,594
<b>Balance, September 30, 2019</b>	<b>\$ 679</b>	<b>\$ (803)</b>	<b>\$ (365)</b>	<b>\$ (4,221)</b>	<b>\$ (907)</b>	<b>\$ (5,617)</b>



The table below presents the net change in fair value recorded in accumulated OCI, net realized gains and losses reclassified into earnings and other changes for each component of OCI pre- and after-tax for the nine months ended September 30, 2020 and 2019.

	Pretax	Tax effect	After-tax	Pretax	Tax effect	After-tax
	Nine Months Ended September 30					
	2020			2019		
(Dollars in millions)						
<b>Debt securities:</b>						
Net increase in fair value	\$ 6,763	\$ (1,685)	\$ 5,078	\$ 8,388	\$ (2,087)	\$ 6,301
Net realized (gains) reclassified into earnings <sup>(1)</sup>	(379)	95	(284)	(93)	23	(70)
<b>Net change</b>	<b>6,384</b>	<b>(1,590)</b>	<b>4,794</b>	<b>8,295</b>	<b>(2,064)</b>	<b>6,231</b>
<b>Debit valuation adjustments:</b>						
Net (decrease) in fair value	(13)	5	(8)	(368)	83	(285)
Net realized losses reclassified into earnings <sup>(1)</sup>	4	(1)	3	16	(3)	13
<b>Net change</b>	<b>(9)</b>	<b>4</b>	<b>(5)</b>	<b>(352)</b>	<b>80</b>	<b>(272)</b>
<b>Derivatives:</b>						
Net increase in fair value	977	(238)	739	765	(173)	592
Reclassifications into earnings:						
Net interest income	96	(23)	73	78	(19)	59
Compensation and benefits expense	(5)	1	(4)	—	—	—
Net realized losses reclassified into earnings	91	(22)	69	78	(19)	59
<b>Net change</b>	<b>1,068</b>	<b>(260)</b>	<b>808</b>	<b>843</b>	<b>(192)</b>	<b>651</b>
<b>Employee benefit plans:</b>						
Net actuarial losses and other reclassified into earnings <sup>(2)</sup>	191	(47)	144	109	(26)	83
<b>Net change</b>	<b>191</b>	<b>(47)</b>	<b>144</b>	<b>109</b>	<b>(26)</b>	<b>83</b>
<b>Foreign currency:</b>						
Net (decrease) in fair value	(29)	(57)	(86)	114	(185)	(71)
Net realized (gains) reclassified into earnings <sup>(1)</sup>	—	—	—	(117)	89	(28)
<b>Net change</b>	<b>(29)</b>	<b>(57)</b>	<b>(86)</b>	<b>(3)</b>	<b>(96)</b>	<b>(99)</b>
<b>Total other comprehensive income (loss)</b>	<b>\$ 7,605</b>	<b>\$ (1,950)</b>	<b>\$ 5,655</b>	<b>\$ 8,892</b>	<b>\$ (2,298)</b>	<b>\$ 6,594</b>

<sup>(1)</sup> Reclassifications of pretax debt securities, DVA and foreign currency (gains) losses are recorded in other income in the Consolidated Statement of Income.

<sup>(2)</sup> Reclassifications of pretax employee benefit plan costs are recorded in other general operating expense in the Consolidated Statement of Income.

## NOTE 14 Fair Value Measurements

Under applicable accounting standards, fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The Corporation determines the fair values of its financial instruments under applicable accounting standards and conducts a review of its fair value hierarchy classifications on a quarterly basis. Transfers into or out of fair value hierarchy classifications are made if the significant inputs used in the financial models measuring the fair values of the assets and liabilities become unobservable or observable in the current

marketplace. During the nine months ended September 30, 2020, there were no changes to valuation approaches or techniques that had, or are expected to have, a material impact on the Corporation's consolidated financial position or results of operations.

For more information regarding the fair value hierarchy, how the Corporation measures fair value and valuation techniques, see *Note 1 – Summary of Significant Accounting Principles* and *Note 21 – Fair Value Measurements* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K. The Corporation accounts for certain financial instruments under the fair value option. For more information, see *Note 15 – Fair Value Option*.



## Recurring Fair Value

Assets and liabilities carried at fair value on a recurring basis at September 30, 2020 and December 31, 2019, including financial instruments that the Corporation accounts for under the fair value option, are summarized in the following tables.

	September 30, 2020					
	Fair Value Measurements					
(Dollars in millions)	Level 1	Level 2	Level 3	Netting Adjustments <sup>(1)</sup>		Assets/Liabilities at Fair Value
<b>Assets</b>						
Time deposits placed and other short-term investments	\$ 385	\$ —	\$ —	\$ —	\$ —	385
Federal funds sold and securities borrowed or purchased under agreements to resell	—	103,101	—	—	—	103,101
Trading account assets:						
U.S. Treasury and agency securities	43,143	2,439	—	—	—	45,582
Corporate securities, trading loans and other	—	25,438	1,470	—	—	26,908
Equity securities	82,015	34,097	207	—	—	116,319
Non-U.S. sovereign debt	10,003	26,455	290	—	—	36,748
Mortgage trading loans, MBS and ABS:						
U.S. government-sponsored agency guaranteed <sup>(2)</sup>	—	20,896	133	—	—	21,029
Mortgage trading loans, ABS and other MBS	—	7,277	1,637	—	—	8,914
Total trading account assets <sup>(3)</sup>	135,161	116,602	3,737	—	—	255,500
Derivative assets	16,129	399,497	2,498	(373,827)	—	44,297
AFS debt securities:						
U.S. Treasury and agency securities	101,693	1,185	—	—	—	102,878
Mortgage-backed securities:						
Agency	—	69,864	—	—	—	69,864
Agency-collateralized mortgage obligations	—	5,837	—	—	—	5,837
Non-agency residential	—	843	440	—	—	1,283
Commercial	—	16,206	—	—	—	16,206
Non-U.S. securities	—	16,340	14	—	—	16,354
Other taxable securities	—	3,608	68	—	—	3,676
Tax-exempt securities	—	17,414	180	—	—	17,594
Total AFS debt securities	101,693	131,297	702	—	—	233,692
Other debt securities carried at fair value:						
U.S. Treasury and agency securities	3	—	—	—	—	3
Non-agency residential MBS	—	751	458	—	—	1,209
Non-U.S. and other securities	5,961	5,132	—	—	—	11,093
Total other debt securities carried at fair value	5,964	5,883	458	—	—	12,305
Loans and leases	—	6,609	625	—	—	7,234
Loans held-for-sale	—	983	922	—	—	1,905
Other assets <sup>(4)</sup>	6,802	4,048	1,875	—	—	12,725
<b>Total assets <sup>(5)</sup></b>	<b>\$ 266,134</b>	<b>\$ 768,020</b>	<b>\$ 10,817</b>	<b>\$ (373,827)</b>	<b>\$ —</b>	<b>671,144</b>
<b>Liabilities</b>						
Interest-bearing deposits in U.S. offices	\$ —	\$ 626	\$ —	\$ —	\$ —	626
Federal funds purchased and securities loaned or sold under agreements to repurchase	—	132,322	—	—	—	132,322
Trading account liabilities:						
U.S. Treasury and agency securities	11,013	200	—	—	—	11,213
Equity securities	40,609	5,390	1	—	—	46,000
Non-U.S. sovereign debt	9,966	10,731	—	—	—	20,697
Corporate securities and other	—	6,755	16	—	—	6,771
Total trading account liabilities	61,588	23,076	17	—	—	84,681
Derivative liabilities	17,292	389,769	6,029	(371,362)	—	41,728
Short-term borrowings	—	4,577	—	—	—	4,577
Accrued expenses and other liabilities	8,530	4,235	—	—	—	12,765
Long-term debt	—	29,485	970	—	—	30,455
<b>Total liabilities <sup>(5)</sup></b>	<b>\$ 87,410</b>	<b>\$ 584,090</b>	<b>\$ 7,016</b>	<b>\$ (371,362)</b>	<b>\$ —</b>	<b>307,154</b>

<sup>(1)</sup> Amounts represent the impact of legally enforceable master netting agreements and also cash collateral held or placed with the same counterparties.

<sup>(2)</sup> Includes \$21.5 billion of GSE obligations.

<sup>(3)</sup> Includes securities with a fair value of \$3.6 billion that were segregated in compliance with securities regulations or deposited with clearing organizations. This amount is included in the parenthetical disclosure on the Consolidated Balance Sheet.

<sup>(4)</sup> Includes MSRs of \$1.1 billion which are classified as Level 3 assets.

<sup>(5)</sup> Total recurring Level 3 assets were 0.40 percent of total consolidated assets, and total recurring Level 3 liabilities were 0.28 percent of total consolidated liabilities.

	December 31, 2019					
	Fair Value Measurements					
(Dollars in millions)	Level 1	Level 2	Level 3	Netting Adjustments <sup>(1)</sup>	Assets/Liabilities at Fair Value	
<b>Assets</b>						
Time deposits placed and other short-term investments	\$ 1,000	\$ —	\$ —	\$ —	\$ 1,000	
Federal funds sold and securities borrowed or purchased under agreements to resell	—	50,364	—	—	50,364	
Trading account assets:						
U.S. Treasury and agency securities	49,517	4,157	—	—	53,674	
Corporate securities, trading loans and other	—	25,226	1,507	—	26,733	
Equity securities	53,597	32,619	239	—	86,455	
Non-U.S. sovereign debt	3,965	23,854	482	—	28,301	
Mortgage trading loans, MBS and ABS:						
U.S. government-sponsored agency guaranteed <sup>(2)</sup>	—	24,324	—	—	24,324	
Mortgage trading loans, ABS and other MBS	—	8,786	1,553	—	10,339	
Total trading account assets <sup>(3)</sup>	107,079	118,966	3,781	—	229,826	
Derivative assets	14,079	328,442	2,226	(304,262)	40,485	
AFS debt securities:						
U.S. Treasury and agency securities	67,332	1,196	—	—	68,528	
Mortgage-backed securities:						
Agency	—	122,528	—	—	122,528	
Agency-collateralized mortgage obligations	—	4,641	—	—	4,641	
Non-agency residential	—	653	424	—	1,077	
Commercial	—	15,021	—	—	15,021	
Non-U.S. securities	—	11,989	2	—	11,991	
Other taxable securities	—	3,876	65	—	3,941	
Tax-exempt securities	—	17,804	108	—	17,912	
Total AFS debt securities	67,332	177,708	599	—	245,639	
Other debt securities carried at fair value:						
U.S. Treasury and agency securities	3	—	—	—	3	
Agency MBS	—	3,003	—	—	3,003	
Non-agency residential MBS	—	1,035	299	—	1,334	
Non-U.S. and other securities	400	6,088	—	—	6,488	
Total other debt securities carried at fair value	403	10,126	299	—	10,828	
Loans and leases	—	7,642	693	—	8,335	
Loans held-for-sale	—	3,334	375	—	3,709	
Other assets <sup>(4)</sup>	11,782	1,376	2,360	—	15,518	
<b>Total assets <sup>(5)</sup></b>	<b>\$ 201,675</b>	<b>\$ 697,958</b>	<b>\$ 10,333</b>	<b>\$ (304,262)</b>	<b>\$ 605,704</b>	
<b>Liabilities</b>						
Interest-bearing deposits in U.S. offices	\$ —	\$ 508	\$ —	\$ —	\$ 508	
Federal funds purchased and securities loaned or sold under agreements to repurchase	—	16,008	—	—	16,008	
Trading account liabilities:						
U.S. Treasury and agency securities	13,140	282	—	—	13,422	
Equity securities	38,148	4,144	2	—	42,294	
Non-U.S. sovereign debt	10,751	11,310	—	—	22,061	
Corporate securities and other	—	5,478	15	—	5,493	
Total trading account liabilities	62,039	21,214	17	—	83,270	
Derivative liabilities	11,904	320,479	4,764	(298,918)	38,229	
Short-term borrowings	—	3,941	—	—	3,941	
Accrued expenses and other liabilities	13,927	1,507	—	—	15,434	
Long-term debt	—	33,826	1,149	—	34,975	
<b>Total liabilities <sup>(5)</sup></b>	<b>\$ 87,870</b>	<b>\$ 397,483</b>	<b>\$ 5,930</b>	<b>\$ (298,918)</b>	<b>\$ 192,365</b>	

<sup>(1)</sup> Amounts represent the impact of legally enforceable master netting agreements and also cash collateral held or placed with the same counterparties.

<sup>(2)</sup> Includes \$26.7 billion of GSE obligations.

<sup>(3)</sup> Includes securities with a fair value of \$14.7 billion that were segregated in compliance with securities regulations or deposited with clearing organizations. This amount is included in the parenthetical disclosure on the Consolidated Balance Sheet.

<sup>(4)</sup> Includes MSR of \$1.5 billion which are classified as Level 3 assets.

<sup>(5)</sup> Total recurring Level 3 assets were 0.42 percent of total consolidated assets, and total recurring Level 3 liabilities were 0.27 percent of total consolidated liabilities.

The following tables present a reconciliation of all assets and liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) during the three and nine months ended September 30, 2020 and 2019, including net realized and unrealized gains (losses) included in earnings and accumulated OCI. Transfers into Level 3 occur primarily due

to decreased price observability, and transfers out of Level 3 occur primarily due to increased price observability. Transfers occur on a regular basis for long-term debt instruments due to changes in the impact of unobservable inputs on the value of the embedded derivative in relation to the instrument as a whole.

### Level 3 – Fair Value Measurements <sup>(1)</sup>

	Balance July 1	Total Realized/Unrealized Gains (Losses) in Net Income <sup>(2)</sup>	Gains (Losses) in OCI <sup>(3)</sup>	Gross				Gross Transfers into Level 3	Gross Transfers out of Level 3	Balance September 30	Change in Unrealized Gains (Losses) in Net Income Related to Financial Instruments Still Held <sup>(2)</sup>
				Purchases	Sales	Issuances	Settlements				
(Dollars in millions)											
Three Months Ended September 30, 2020											
Trading account assets:											
Corporate securities, trading loans and other	\$ 1,548	\$ (20)	\$ —	\$ —	\$ (49)	\$ —	\$ (91)	\$ 136	\$ (54)	\$ 1,470	\$ (34)
Equity securities	194	8	—	4	(3)	—	—	7	(3)	207	3
Non-U.S. sovereign debt	248	7	(6)	1	(2)	—	(1)	83	(40)	290	6
Mortgage trading loans, ABS and other MBS	1,736	2	—	36	(108)	11	(12)	167	(62)	1,770	10
Total trading account assets	3,726	(3)	(6)	41	(162)	11	(104)	393	(159)	3,737	(15)
Net derivative assets (liabilities) <sup>(4)</sup>	(3,343)	228	—	39	(177)	—	(58)	3	(223)	(3,531)	196
AFS debt securities:											
Non-agency residential MBS	462	—	5	—	—	—	(10)	25	(42)	440	—
Non-U.S. securities	5	—	—	—	—	—	(1)	10	—	14	—
Other taxable securities	65	—	—	3	—	—	—	—	—	68	—
Tax-exempt securities	337	15	—	—	—	—	(167)	—	(5)	180	15
Total AFS debt securities	869	15	5	3	—	—	(178)	35	(47)	702	15
Other debt securities carried at fair value – Non-agency residential MBS											
Loans and leases <sup>(5,6)</sup>	741	(2)	—	—	(25)	—	(89)	—	—	625	(5)
Loans held-for-sale <sup>(5,6)</sup>	970	(7)	(2)	—	(25)	—	(14)	—	—	922	(10)
Other assets <sup>(6,7)</sup>	1,911	25	6	—	1	53	(121)	—	—	1,875	4
Trading account liabilities – Equity securities	(1)	—	—	—	—	—	—	—	—	(1)	—
Trading account liabilities – Corporate securities and other	(16)	2	—	—	(2)	—	—	—	—	(16)	—
Long-term debt <sup>(5)</sup>	(956)	(50)	(10)	—	—	—	46	—	—	(970)	(50)
Three Months Ended September 30, 2019											
Trading account assets:											
Corporate securities, trading loans and other	\$ 1,393	\$ 28	\$ —	\$ 158	\$ (153)	\$ —	\$ (143)	\$ 356	\$ (48)	\$ 1,591	\$ —
Equity securities	296	(8)	—	17	(81)	—	(1)	66	(10)	279	(31)
Non-U.S. sovereign debt	481	9	(28)	—	—	—	(36)	39	—	465	10
Mortgage trading loans, ABS and other MBS	1,389	(8)	—	91	(156)	—	(48)	316	(21)	1,563	(24)
Total trading account assets	3,559	21	(28)	266	(390)	—	(228)	777	(79)	3,898	(45)
Net derivative assets (liabilities) <sup>(4)</sup>	(1,114)	73	—	81	(270)	—	(36)	—	34	(1,232)	52
AFS debt securities:											
Non-agency residential MBS	568	—	(13)	—	—	—	(8)	—	(39)	508	—
Non-U.S. securities	2	—	—	—	—	—	—	—	—	2	—
Other taxable securities	3	—	—	—	—	—	—	—	—	3	—
Total AFS debt securities	573	—	(13)	—	—	—	(8)	—	(39)	513	—
Other debt securities carried at fair value – Non-agency residential MBS											
Loans and leases <sup>(5,6)</sup>	355	8	—	27	(17)	44	(16)	—	—	401	8
Loans held-for-sale <sup>(5,6)</sup>	486	5	(11)	2	—	—	(96)	—	—	386	(7)
Other assets <sup>(6,7)</sup>	2,551	(40)	(5)	—	—	53	(163)	4	—	2,400	(82)
Trading account liabilities – Equity securities	(2)	—	—	—	—	—	—	—	—	(2)	—
Trading account liabilities – Corporate securities and other	(13)	1	—	(1)	—	—	—	—	—	(13)	(1)
Long-term debt <sup>(5)</sup>	(902)	16	1	(27)	—	—	49	(1)	—	(864)	16

<sup>(1)</sup> Assets (liabilities). For assets, increase (decrease) to Level 3 and for liabilities, (increase) decrease to Level 3.

<sup>(2)</sup> Includes gains (losses) reported in earnings in the following income statement line items: Trading account assets/liabilities - predominantly market making and similar activities; Net derivative assets (liabilities) - market making and similar activities and other income; AFS debt securities - other income; Other debt securities carried at fair value - other income; Loans and leases - primarily other income; Loans held-for-sale - other income; Other assets - primarily other income related to MSRs; Long-term debt - market making and similar activities.

<sup>(3)</sup> Includes unrealized gains (losses) in OCI on AFS debt securities, foreign currency translation adjustments and the impact of changes in the Corporation's credit spreads on long-term debt accounted for under the fair value option. Amounts include net unrealized gains (losses) of \$(8) million and \$53 million related to financial instruments still held at September 30, 2020 and 2019.

<sup>(4)</sup> Net derivative assets (liabilities) include derivative assets of \$ 5.5 billion and \$ 4.4 billion and derivative liabilities of \$ 0.0 billion and \$ 4.6 billion at September 30, 2020 and 2019.

<sup>(5)</sup> Amounts represent instruments that are accounted for under the fair value option.

<sup>(6)</sup> Issuances represent loan originations and MSRs recognized following securitizations or whole-loan sales.

<sup>(7)</sup> Settlements primarily represent the net change in fair value of the MSR asset due to the recognition of modeled cash flows and the passage of time.

### Level 3 – Fair Value Measurements <sup>(1)</sup>

(Dollars in millions)	Balance January 1	Total Realized/Unrealized Gains (Losses) in Net Income <sup>(2)</sup>	Gains (Losses) in OCI <sup>(3)</sup>	Gross				Gross Transfers into Level 3	Gross Transfers out of Level 3	Balance September 30	Change in Unrealized Gains (Losses) in Net Income Related to Financial Instruments Still Held <sup>(2)</sup>	
				Purchases	Sales	Issuances	Settlements					
Nine Months Ended September 30, 2020												
Trading account assets:												
Corporate securities, trading loans and other	\$ 1,507	\$ (150)	\$ (1)	\$ 280	\$ (181)	\$ 8	\$ (165)	\$ 520	\$ (348)	\$ 1,470	\$ (128)	
Equity securities	239	(17)	—	33	(37)	—	—	32	(43)	207	(20)	
Non-U.S. sovereign debt	482	35	(69)	76	(61)	—	(20)	100	(253)	290	33	
Mortgage trading loans, ABS and other MBS	1,553	(145)	(3)	502	(582)	11	(52)	659	(173)	1,770	(135)	
Total trading account assets	3,781	(277)	(73)	891	(861)	19	(237)	1,311	(817)	3,737	(250)	
Net derivative assets (liabilities) <sup>(4)</sup>	(2,538)	111	—	216	(558)	—	(224)	(273)	(265)	(3,531)	(356)	
AFS debt securities:												
Non-agency residential MBS	424	(5)	(4)	23	—	—	(32)	158	(124)	440	(5)	
Non-U.S. securities	2	—	—	—	(1)	—	(1)	14	—	14	—	
Other taxable securities	65	—	—	6	(4)	—	—	1	—	68	—	
Tax-exempt securities	108	(19)	3	—	—	—	(167)	265	(10)	180	(18)	
Total AFS debt securities	599	(24)	(1)	29	(5)	—	(200)	438	(134)	702	(23)	
Other debt securities carried at fair value – Non-agency residential MBS	299	12	—	—	—	—	(19)	178	(12)	458	(12)	
Loans and leases <sup>(5,6)</sup>	693	(74)	—	32	(26)	22	(120)	98	—	625	(61)	
Loans held-for-sale <sup>(5,6)</sup>	375	(7)	(35)	—	(106)	691	(89)	93	—	922	(19)	
Other assets <sup>(6,7)</sup>	2,360	(294)	(11)	—	2	206	(391)	5	(2)	1,875	(373)	
Trading account liabilities – Equity securities	(2)	1	—	—	—	—	—	—	—	(1)	1	
Trading account liabilities – Corporate securities and other	(15)	7	—	(7)	(2)	—	1	—	—	(16)	—	
Long-term debt <sup>(5)</sup>	(1,149)	5	50	8	—	(45)	201	(52)	12	(970)	(10)	
Nine Months Ended September 30, 2019												
Trading account assets:												
Corporate securities, trading loans and other	\$ 1,558	\$ 86	\$ —	\$ 352	\$ (305)	\$ —	\$ (349)	\$ 602	\$ (353)	\$ 1,591	\$ 33	
Equity securities	276	14	—	38	(87)	—	(4)	69	(27)	279	(14)	
Non-U.S. sovereign debt	465	36	(24)	1	—	—	(47)	39	(5)	465	37	
Mortgage trading loans, ABS and other MBS	1,635	80	(2)	488	(817)	—	(172)	583	(232)	1,563	13	
Total trading account assets	3,934	216	(26)	879	(1,209)	—	(572)	1,293	(617)	3,898	69	
Net derivative assets (liabilities) <sup>(4)</sup>	(935)	(43)	—	248	(676)	—	(124)	139	159	(1,232)	(110)	
AFS debt securities:												
Non-agency residential MBS	597	—	77	—	—	—	(29)	206	(343)	508	—	
Non-U.S. securities	2	—	—	—	—	—	—	—	—	2	—	
Other taxable securities	7	—	—	—	—	—	(4)	—	—	3	—	
Total AFS debt securities	606	—	77	—	—	—	(33)	206	(343)	513	—	
Other debt securities carried at fair value – Non-agency residential MBS	172	41	—	—	—	—	(13)	155	(47)	308	38	
Loans and leases <sup>(5,6)</sup>	338	12	—	27	(32)	97	(41)	—	—	401	11	
Loans held-for-sale <sup>(5,6)</sup>	542	43	(11)	12	(71)	11	(199)	59	—	386	13	
Other assets <sup>(6,7)</sup>	2,932	(194)	11	—	(10)	161	(504)	4	—	2,400	(342)	
Trading account liabilities – Equity securities	—	(2)	—	—	—	—	—	—	—	(2)	(2)	
Trading account liabilities – Corporate securities and other	(18)	8	—	—	(3)	—	—	—	—	(13)	(1)	
Long-term debt <sup>(5)</sup>	(817)	(71)	—	(27)	—	(13)	125	(62)	1	(864)	(64)	

<sup>(1)</sup> Assets (liabilities). For assets, increase (decrease) to Level 3 and for liabilities, (increase) decrease to Level 3.

<sup>(2)</sup> Includes gains (losses) reported in earnings in the following income statement line items: Trading account assets/liabilities - predominantly market making and similar activities; Net derivative assets (liabilities) - market making and similar activities and other income; AFS debt securities - other income; Other debt securities carried at fair value - other income; Loans and leases - primarily other income; Loans held-for-sale - other income; Other assets - primarily other income related to MSRs; Long-term debt - market making and similar activities.

<sup>(3)</sup> Includes unrealized gains (losses) in OCI on AFS debt securities, foreign currency translation adjustments and the impact of changes in the Corporation's credit spreads on long-term debt accounted for under the fair value option. Amounts include net unrealized gains (losses) of \$(47) million and \$47 million related to financial instruments still held at September 30, 2020 and 2019.

<sup>(4)</sup> Net derivative assets (liabilities) include derivative assets of \$5.5 billion and \$3.4 billion and derivative liabilities of \$0.0 billion and \$4.6 billion at September 30, 2020 and 2019.

<sup>(5)</sup> Amounts represent instruments that are accounted for under the fair value option.

<sup>(6)</sup> Issuances represent loan originations and MSRs recognized following securitizations or whole-loan sales.

<sup>(7)</sup> Settlements primarily represent the net change in fair value of the MSR asset due to the recognition of modeled cash flows and the passage of time.

The following tables present information about significant unobservable inputs related to the Corporation's material categories of Level 3 financial assets and liabilities at September 30, 2020 and December 31, 2019.

**Quantitative Information about Level 3 Fair Value Measurements at September 30, 2020**

(Dollars in millions)

(Dollars in millions)

Financial Instrument		Fair Value	Valuation Technique	Significant Unobservable Inputs	Ranges of Inputs	Weighted Average <sup>(1)</sup>
Loans and Securities <sup>(2)</sup>						
Instruments backed by residential real estate assets	\$ 1,903	Discounted cash flow, Market comparables	Yield	0% to 25%	6 %	
Trading account assets – Mortgage trading loans, ABS and other MBS	566		Prepayment speed	1% to 31% CPR	19% CPR	
Loans and leases	356		Default rate	0% to 3% CDR	1% CDR	
Loans held-for-sale	1		Loss severity	0% to 48%	19 %	
AFS debt securities, primarily non-agency residential	440		Price	\$0 to \$160	\$80	
AFS debt securities – Other taxable securities	82					
Other debt securities carried at fair value - Non-agency residential	458					
Instruments backed by commercial real estate assets	\$ 1,158	Discounted cash flow	Yield	0% to 25%	4 %	
Trading account assets – Corporate securities, trading loans and other	288		Price	\$0 to \$117	\$62	
Trading account assets – Mortgage trading loans, ABS and other MBS	156					
Loans held-for-sale	714					
Commercial loans, debt securities and other	\$ 3,043	Discounted cash flow, Market comparables	Yield	1% to 32%	8 %	
Trading account assets – Corporate securities, trading loans and other	1,182		Prepayment speed	10% to 20%	14 %	
Trading account assets – Non-U.S. sovereign debt	290		Default rate	3% to 4%	4 %	
Trading account assets – Mortgage trading loans, ABS and other MBS	915		Loss severity	35% to 40%	38 %	
AFS debt securities – Tax-exempt securities	180		Price	\$0 to \$142	\$67	
Loans and leases	269		Long-dated equity volatilities	93%	n/a	
Loans held-for-sale	207					
Other assets, primarily auction rate securities	\$ 793	Discounted cash flow, Market comparables	Price	\$10 to \$98	\$94	
MSRs	\$ 1,082	Discounted cash flow	Weighted-average life, fixed rate <sup>(5)</sup>	0 to 14 years	4 years	
			Weighted-average life, variable rate <sup>(5)</sup>	0 to 10 years	3 years	
			Option-adjusted spread, fixed rate	7% to 14%	9 %	
			Option-adjusted spread, variable rate	9% to 15%	12 %	
Structured liabilities						
Long-term debt	\$ (970)	Discounted cash flow, Market comparables, Industry standard derivative pricing <sup>(3)</sup>	Yield	2% to 7%	7 %	
			Equity correlation	5% to 100%	76 %	
			Long-dated equity volatilities	15% to 79%	35 %	
			Price	\$0 to \$118	\$82	
			Natural gas forward price	\$1/MMBtu to \$4/MMBtu	\$3 /MMBtu	
Net derivative assets (liabilities)						
Credit derivatives	\$ (50)	Discounted cash flow, Stochastic recovery correlation model	Yield	5%	n/a	
			Upfront points	0 to 100 points	75 points	
			Prepayment speed	15% to 100% CPR	23% CPR	
			Default rate	2% CDR	n/a	
			Credit correlation	24% to 69%	49 %	
			Price	\$0 to \$122	\$53	
Equity derivatives	\$ (1,879)	Industry standard derivative pricing <sup>(3)</sup>	Equity correlation	5% to 100%	76 %	
			Long-dated equity volatilities	15% to 79%	35 %	
Commodity derivatives	\$ (1,528)	Discounted cash flow, Industry standard derivative pricing <sup>(3)</sup>	Natural gas forward price	\$1/MMBtu to \$4/MMBtu	\$3 /MMBtu	
			Correlation	54% to 85%	74 %	
			Volatilities	22% to 89%	43 %	
Interest rate derivatives	\$ (74)	Industry standard derivative pricing <sup>(4)</sup>	Correlation (IR/IR)	15% to 96%	38 %	
			Correlation (FX/IR)	0% to 46%	2 %	
			Long-dated inflation rates	-5% to 84%	15 %	
			Long-dated inflation volatilities	0% to 2%	1 %	
Total net derivative assets (liabilities)	\$ (3,531)					

<sup>(1)</sup> For loans and securities, structured liabilities and net derivative assets (liabilities), the weighted average is calculated based upon the absolute fair value of the instruments.

<sup>(2)</sup> The categories are aggregated based upon product type which differs from financial statement classification. The following is a reconciliation to the line items in the table on page 90: Trading account assets – Corporate securities, trading loans and other of \$5 billion, Trading account assets – Non-U.S. sovereign debt of \$290 million, Trading account assets – Mortgage trading loans, ABS and other MBS of \$6 billion, AFS debt securities of \$702 million, Other debt securities carried at fair value - Non-agency residential of \$458 million. Other assets, including MSRs, of \$9.9 billion, Loans and leases of \$625 million and LHFS of \$922 million.

<sup>(3)</sup> Includes models such as Monte Carlo simulation and Black-Scholes.

<sup>(4)</sup> Includes models such as Monte Carlo simulation, Black-Scholes and other methods that model the joint dynamics of interest, inflation and foreign exchange rates.

<sup>(5)</sup> The weighted-average life is a product of changes in market rates of interest, prepayment rates and other model and cash flow assumptions.

CPR = Constant Prepayment Rate

CDR = Constant Default Rate

MMBtu = Million British thermal units

IR = Interest Rate

FX = Foreign Exchange

n/a = not applicable

## Quantitative Information about Level 3 Fair Value Measurements at December 31, 2019

(Dollars in millions)

(Dollars in millions)		Inputs			
Financial Instrument	Fair Value	Valuation Technique	Significant Unobservable Inputs	Ranges of Inputs	Weighted Average
Loans and Securities <sup>(2)</sup>					
Instruments backed by residential real estate assets	\$ 1,407	Discounted cash flow, Market comparables	Yield	0% to 25%	6 %
Trading account assets – Mortgage trading loans, ABS and other MBS	332		Prepayment speed	1% to 27% CPR	17% CPR
Loans and leases	281		Default rate	0% to 3% CDR	1% CDR
Loans held-for-sale	4		Loss severity	0% to 47%	14 %
AFS debt securities, primarily non-agency residential	491		Price	\$0 to \$160	\$94
Other debt securities carried at fair value - Non-agency residential	299				
Instruments backed by commercial real estate assets	\$ 303	Discounted cash flow	Yield	0% to 30%	14 %
Trading account assets – Corporate securities, trading loans and other	201		Price	\$0 to \$100	\$55
Trading account assets – Mortgage trading loans, ABS and other MBS	85				
Loans held-for-sale	17				
Commercial loans, debt securities and other	\$ 3,798	Discounted cash flow, Market comparables	Yield	1% to 20%	6 %
Trading account assets – Corporate securities, trading loans and other	1,306		Prepayment speed	10% to 20%	13 %
Trading account assets – Non-U.S. sovereign debt	482		Default rate	3% to 4%	4 %
Trading account assets – Mortgage trading loans, ABS and other MBS	1,136		Loss severity	35% to 40%	38 %
AFS debt securities – Tax-exempt securities	108		Price	\$0 to \$142	\$72
Loans and leases	412		Long-dated equity volatilities	35%	n/a
Loans held-for-sale	354				
Other assets, primarily auction rate securities	\$ 815	Discounted cash flow, Market comparables	Price	\$10 to \$100	\$96
MSRs	\$ 1,545	Discounted cash flow	Weighted-average life, fixed rate <sup>(5)</sup>	0 to 14 years	5 years
			Weighted-average life, variable rate <sup>(5)</sup>	0 to 9 years	3 years
			Option-adjusted spread, fixed rate	7% to 14%	9 %
			Option-adjusted spread, variable rate	9% to 15%	11 %
Structured liabilities					
Long-term debt	\$ (1,149)	Discounted cash flow, Market comparables, Industry standard derivative pricing <sup>(3)</sup>	Yield	2% to 6%	5 %
			Equity correlation	9% to 100%	63 %
			Long-dated equity volatilities	4% to 101%	32 %
			Price	\$0 to \$116	\$74
			Natural gas forward price	\$1/MMBtu to \$5/MMBtu	\$3/MMBtu
Net derivative assets (liabilities)					
Credit derivatives	\$ 13	Discounted cash flow, Stochastic recovery correlation model	Yield	5%	n/a
			Upfront points	0 to 100 points	63 points
			Prepayment speed	15% to 100% CPR	22% CPR
			Default rate	1% to 4% CDR	2% CDR
			Loss severity	35%	n/a
			Price	\$0 to \$104	\$73
Equity derivatives	\$ (1,081)	Industry standard derivative pricing <sup>(3)</sup>	Equity correlation	9% to 100%	63 %
			Long-dated equity volatilities	4% to 101%	32 %
Commodity derivatives	\$ (1,357)	Discounted cash flow, Industry standard derivative pricing <sup>(3)</sup>	Natural gas forward price	\$1/MMBtu to \$5/MMBtu	\$3/MMBtu
			Correlation	30% to 69%	68 %
			Volatilities	14% to 54%	27 %
Interest rate derivatives	\$ (113)	Industry standard derivative pricing <sup>(4)</sup>	Correlation (IR/IR)	15% to 94%	52 %
			Correlation (FX/IR)	0% to 46%	2 %
			Long-dated inflation rates	-23% to 56%	16 %
			Long-dated inflation volatilities	0% to 1%	1 %
Total net derivative assets (liabilities)	\$ (2,538)				

<sup>(1)</sup> For loans and securities, structured liabilities and net derivative assets (liabilities), the weighted average is calculated based upon the absolute fair value of the instruments.

<sup>(2)</sup> The categories are aggregated based upon product type which differs from financial statement classification. The following is a reconciliation to the line items in the table on page 91: Trading account assets – Corporate securities, trading loans and other of \$5 billion, Trading account assets – Non-U.S. sovereign debt of \$482 million, Trading account assets – Mortgage trading loans, ABS and other MBS of \$5.6 billion, AFS debt securities of \$599 million, Other debt securities carried at fair value - Non-agency residential of \$299 million, Other assets, including MSRs, of \$2.4 billion, Loans and leases of \$693 million and LHFS of \$375 million.

<sup>(3)</sup> Includes models such as Monte Carlo simulation and Black-Scholes.

<sup>(4)</sup> Includes models such as Monte Carlo simulation, Black-Scholes and other methods that model the joint dynamics of interest, inflation and foreign exchange rates.

<sup>(5)</sup> The weighted-average life is a product of changes in market rates of interest, prepayment rates and other model and cash flow assumptions.

CPR = Constant Prepayment Rate

CDR = Constant Default Rate

MMBtu = Million British thermal units

IR = Interest Rate

FX = Foreign Exchange

n/a = not applicable

## Uncertainty of Fair Value Measurements from Unobservable Inputs

For information on the types of instruments, valuation approaches and the impact of changes in unobservable inputs used in Level 3 measurements, see [Note 21 – Fair Value Measurements](#) to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

## Nonrecurring Fair Value

The Corporation holds certain assets that are measured at fair value only in certain situations (e.g., the impairment of an asset), and these measurements are referred to herein as nonrecurring. The amounts below represent assets still held as of the reporting date for which a nonrecurring fair value adjustment was recorded during the three and nine months ended September 30, 2020 and 2019.

### Assets Measured at Fair Value on a Nonrecurring Basis

	September 30, 2020		Three Months Ended September 30, 2020		Nine Months Ended September 30, 2020	
(Dollars in millions)	Level 2	Level 3	Gains (Losses)			
<b>Assets</b>						
Loans held-for-sale	\$ 630	\$ 903	\$ (14)	\$ (121)		
Loans and leases <sup>(1)</sup>	—	226	(19)	(59)		
Foreclosed properties <sup>(2, 3)</sup>	—	27	(7)	(11)		
Other assets	209	576	(32)	(58)		
	September 30, 2019		Three Months Ended September 30, 2019		Nine Months Ended September 30, 2019	
<b>Assets</b>						
Loans held-for-sale	\$ 5	\$ 111	\$ (7)	\$ (18)		
Loans and leases <sup>(1)</sup>	—	232	(21)	(62)		
Foreclosed properties <sup>(2, 3)</sup>	—	19	(7)	(10)		
Other assets	165	658	(2,085)	(2,104)		

<sup>(1)</sup> Includes \$9 million and \$26 million of losses on loans that were written down to a collateral value of zero during the three and nine months ended September 30, 2020 compared to losses of \$ million and \$25 million for the same periods in 2019.

<sup>(2)</sup> Amounts are included in other assets on the Consolidated Balance Sheet and represent the carrying value of foreclosed properties that were written down subsequent to their initial classification as foreclosed properties. Losses on foreclosed properties include losses recorded during the first 90 days after transfer of a loan to foreclosed properties.

<sup>(3)</sup> Excludes \$131 million and \$275 million of properties acquired upon foreclosure of certain government-guaranteed loans (principally FHA-insured loans) at September 30, 2020 and 2019.

The table below presents information about significant unobservable inputs at September 30, 2020 and December 31, 2019.

### Quantitative Information about Nonrecurring Level 3 Fair Value Measurements

Financial Instrument	Fair Value	Valuation Technique	Inputs		
			Significant Unobservable Inputs	Ranges of Inputs	Weighted Average <sup>(1)</sup>
(Dollars in millions)					
			September 30, 2020		
<b>Loans held-for-sale</b>	\$ 903	Discounted cash flow	Price	\$8 to \$99	\$94
<b>Loans and leases <sup>(2)</sup></b>	226	Market comparables	OREO discount	13% to 59%	24 %
			Costs to sell	8% to 26%	9 %
<b>Other assets <sup>(3)</sup></b>	576	Discounted cash flow	Revenue attrition	2% to 19%	7 %
			Discount rate	11% to 14%	12 %
			December 31, 2019		
<b>Loans held-for-sale</b>	\$ 102	Discounted cash flow	Price	\$85 to \$97	\$88
<b>Loans and leases <sup>(2)</sup></b>	257	Market comparables	OREO discount	13% to 59%	24 %
			Costs to sell	8% to 26%	9 %
<b>Other assets <sup>(4)</sup></b>	640	Discounted cash flow	Customer attrition	0% to 19%	5 %
			Cost to service	11% to 19%	15 %

<sup>(1)</sup> The weighted average is calculated based upon the fair value of the loans.

<sup>(2)</sup> Represents residential mortgages where the loan has been written down to the fair value of the underlying collateral.

<sup>(3)</sup> The fair value of the intangible asset related to the merchant contracts received from the merchant services joint venture was measured using a discounted cash flow method for which the two key assumptions were the revenue attrition rate and the discount rate. For more information, see *Note 7 – Goodwill and Intangible Assets*.

<sup>(4)</sup> Reflects the measurement of the Corporation's merchant services equity method investment on which the Corporation recorded an impairment charge in 2019. For more information, see *Note 13 – Commitments and Contingencies* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K. The fair value of the merchant services joint venture was measured using a discounted cash flow method for which the two key assumptions were the customer attrition rate and the cost-to-service rate.

## NOTE 15 Fair Value Option

The Corporation elects to account for certain financial instruments under the fair value option. For more information on the primary financial instruments for which the fair value option elections have been made, see *Note 22 – Fair Value Option* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K. The following tables provide information about the fair value carrying amount and the

contractual principal outstanding of assets and liabilities accounted for under the fair value option at September 30, 2020 and December 31, 2019, and information about where changes in the fair value of assets and liabilities accounted for under the fair value option are included in the Consolidated Statement of Income for the three and nine months ended September 30, 2020 and 2019.

## Fair Value Option Elections

	September 30, 2020			December 31, 2019		
	Fair Value Carrying Amount	Contractual Principal Outstanding	Fair Value Carrying Amount Less Unpaid Principal	Fair Value Carrying Amount	Contractual Principal Outstanding	Fair Value Carrying Amount Less Unpaid Principal
(Dollars in millions)						
Federal funds sold and securities borrowed or purchased under agreements to resell	\$ 103,101	\$ 103,050	\$ 51	\$ 50,364	\$ 50,318	\$ 46
Loans reported as trading account assets <sup>(1)</sup>	6,003	15,294	(9,291)	6,989	14,703	(7,714)
Trading inventory – other	20,833	n/a	n/a	19,574	n/a	n/a
Consumer and commercial loans	7,234	7,414	(180)	8,335	8,372	(37)
Loans held-for-sale <sup>(1)</sup>	1,905	2,836	(931)	3,709	4,879	(1,170)
Other assets	27	n/a	n/a	4	n/a	n/a
Long-term deposits	626	579	47	508	496	12
Federal funds purchased and securities loaned or sold under agreements to repurchase	132,322	132,325	(3)	16,008	16,029	(21)
Short-term borrowings	4,577	4,457	120	3,941	3,930	11
Unfunded loan commitments	122	n/a	n/a	90	n/a	n/a
Long-term debt	30,455	31,896	(1,441)	34,975	35,730	(755)

<sup>(1)</sup> A significant portion of the loans reported as trading account assets and LHFS are distressed loans that were purchased at a deep discount to par, and the remainder are loans with a fair value near contractual principal outstanding.  
n/a = not applicable

## Gains (Losses) Relating to Assets and Liabilities Accounted for Under the Fair Value Option

	Three Months Ended September 30					
	2020			2019		
	Market making and similar activities	Other Income	Total	Market making and similar activities	Other Income	Total
(Dollars in millions)						
Loans reported as trading account assets	\$ 58	\$ —	\$ 58	\$ 4	\$ —	\$ 4
Trading inventory – other <sup>(1)</sup>	709	—	709	(156)	—	(156)
Consumer and commercial loans	(2)	102	100	81	(6)	75
Loans held-for-sale <sup>(2)</sup>	—	22	22	—	28	28
Short-term borrowings	(38)	—	(38)	—	—	—
Unfunded loan commitments	—	(18)	(18)	—	13	13
Long-term debt <sup>(3)</sup>	(347)	(6)	(353)	(127)	(20)	(147)
Other <sup>(4)</sup>	19	7	26	(1)	(14)	(15)
<b>Total</b>	<b>\$ 399</b>	<b>\$ 107</b>	<b>\$ 506</b>	<b>\$ (199)</b>	<b>\$ 1</b>	<b>\$ (198)</b>

	Nine Months Ended September 30					
	2020			2019		
	Market making and similar activities	Other Income	Total	Market making and similar activities	Other Income	Total
(Dollars in millions)						
Loans reported as trading account assets	\$ (15)	\$ —	\$ (15)	\$ 167	\$ —	\$ 167
Trading inventory – other <sup>(1)</sup>	1,259	—	1,259	4,211	—	4,211
Consumer and commercial loans	(49)	(85)	(134)	98	11	109
Loans held-for-sale <sup>(2)</sup>	—	67	67	—	110	110
Short-term borrowings	196	—	196	—	—	—
Unfunded loan commitments	—	(88)	(88)	—	54	54
Long-term debt <sup>(3)</sup>	(1,300)	(31)	(1,331)	(1,412)	(65)	(1,477)
Other <sup>(4)</sup>	28	(31)	(3)	8	(34)	(26)
<b>Total</b>	<b>\$ 119</b>	<b>\$ (168)</b>	<b>\$ (49)</b>	<b>\$ 3,072</b>	<b>\$ 76</b>	<b>\$ 3,148</b>

<sup>(1)</sup> The gains (losses) in market making and similar activities are primarily offset by (losses) gains on trading liabilities that hedge these assets.

<sup>(2)</sup> Includes the value of interest rate lock commitments on funded loans, including those sold during the period.

<sup>(3)</sup> The net losses in market making and similar activities relate to the embedded derivatives in structured liabilities and are typically offset by gains on derivatives and securities that hedge these liabilities. For the cumulative impact of changes in the Corporation's own credit spreads and the amount recognized in accumulated OCI, see Note 13 – *Accumulated Other Comprehensive Income (Loss)*. For more information on how the Corporation's own credit spread is determined, see Note 21 – *Fair Value Measurements* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

<sup>(4)</sup> Includes gains (losses) on federal funds sold and securities borrowed or purchased under agreements to resell, long-term deposits and federal funds purchased and securities loaned or sold under agreements to repurchase.

## Gains (Losses) Related to Borrower-specific Credit Risk for Assets and Liabilities Accounted for Under the Fair Value Option

	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
(Dollars in millions)				
Loans reported as trading account assets	\$ 11	\$ 19	\$ (225)	\$ 47
Consumer and commercial loans	100	(5)	(96)	14
Loans held-for-sale	(24)	29	(117)	70
Unfunded loan commitments	(18)	13	(88)	54



## NOTE 16 Fair Value of Financial Instruments

The following disclosures include financial instruments that are not carried at fair value or only a portion of the ending balance is carried at fair value on the Consolidated Balance Sheet. Certain loans, deposits, long-term debt and unfunded lending commitments are accounted for under the fair value option. For more information, see *Note 22 – Fair Value Option* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

### Fair Value of Financial Instruments

The carrying values and fair values by fair value hierarchy of certain financial instruments where only a portion of the ending balance was carried at fair value at September 30, 2020 and December 31, 2019 are presented in the following table.

#### Fair Value of Financial Instruments

(Dollars in millions)	Fair Value				
	Carrying Value	Level 2		Level 3	Total
		September 30, 2020			
<b>Financial assets</b>					
Loans	\$ 913,679	\$ 50,473	\$ 905,856	\$ 956,329	
Loans held-for-sale	4,434	2,047	2,388	4,435	
<b>Financial liabilities</b>					
Deposits <sup>(1)</sup>	1,702,880	1,702,970	—	1,702,970	
Long-term debt	255,723	259,505	970	260,475	
Commercial unfunded lending commitments <sup>(2)</sup>	2,032	122	5,277	5,399	
	December 31, 2019				
<b>Financial assets</b>					
Loans	\$ 950,093	\$ 63,633	\$ 914,597	\$ 978,230	
Loans held-for-sale	9,158	8,439	719	9,158	
<b>Financial liabilities</b>					
Deposits <sup>(1)</sup>	1,434,803	1,434,809	—	1,434,809	
Long-term debt	240,856	247,376	1,149	248,525	
Commercial unfunded lending commitments <sup>(2)</sup>	903	90	4,777	4,867	

<sup>(1)</sup> Includes demand deposits of \$751.0 billion and \$545.5 billion with no stated maturities at September 30, 2020 and December 31, 2019.

<sup>(2)</sup> The carrying value of commercial unfunded lending commitments is included in accrued expenses and other liabilities on the Consolidated Balance Sheet. The Corporation does not estimate the fair value of consumer unfunded lending commitments because, in many instances, the Corporation can reduce or cancel these commitments by providing notice to the borrower. For more information on commitments, see *Note 10 – Commitments and Contingencies*.

## NOTE 17 Business Segment Information

The Corporation reports its results of operations through the following four business segments: *Consumer Banking*, *Global Wealth & Investment Management*, *Global Banking* and *Global Markets*, with the remaining operations recorded in *All Other*. For more information, see *Note 24 – Business Segment Information* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K. The following tables present net income (loss) and the associated components (with net

interest income on an FTE basis for the business segments, *All Other* and the total Corporation) for the three and nine months ended September 30, 2020 and 2019, and total assets at September 30, 2020 and 2019 for each business segment, as well as *All Other*, including a reconciliation of the four business segments' total revenue, net of interest expense, on an FTE basis, and net income to the Consolidated Statement of Income, and total assets to the Consolidated Balance Sheet.

## Results of Business Segments and All Other

At and for the three months ended September 30

(Dollars in millions)

	Total Corporation <sup>(1)</sup>		Consumer Banking		Global Wealth & Investment Management	
	2020	2019	2020	2019	2020	2019
Net interest income	\$ 10,243	\$ 12,335	\$ 5,890	\$ 7,031	\$ 1,237	\$ 1,609
Noninterest income	10,207	10,620	2,149	2,693	3,309	3,295
Total revenue, net of interest expense	20,450	22,955	8,039	9,724	4,546	4,904
Provision for credit losses	1,389	779	479	917	24	37
Noninterest expense	14,401	15,169	4,842	4,399	3,530	3,414
Income before income taxes	4,660	7,007	2,718	4,408	992	1,453
Income tax expense	(221)	1,230	666	1,080	243	356
<b>Net income</b>	<b>\$ 4,881</b>	<b>\$ 5,777</b>	<b>\$ 2,052</b>	<b>\$ 3,328</b>	<b>\$ 749</b>	<b>\$ 1,097</b>
<b>Period-end total assets</b>	<b>\$ 2,738,452</b>	<b>\$ 2,426,330</b>	<b>\$ 947,513</b>	<b>\$ 788,814</b>	<b>\$ 337,576</b>	<b>\$ 288,332</b>

	Global Banking		Global Markets		All Other	
	2020	2019	2020	2019	2020	2019
Net interest income	\$ 2,028	\$ 2,617	\$ 1,108	\$ 1,016	\$ (20)	\$ 62
Noninterest income	2,489	2,595	3,175	2,847	(915)	(810)
Total revenue, net of interest expense	4,517	5,212	4,283	3,863	(935)	(748)
Provision for credit losses	883	120	21	—	(18)	(295)
Noninterest expense	2,365	2,219	3,104	2,677	560	2,460
Income before income taxes	1,269	2,873	1,158	1,186	(1,477)	(2,913)
Income tax expense	343	776	301	338	(1,774)	(1,320)
<b>Net income</b>	<b>\$ 926</b>	<b>\$ 2,097</b>	<b>\$ 857</b>	<b>\$ 848</b>	<b>\$ 297</b>	<b>\$ (1,593)</b>
<b>Period-end total assets</b>	<b>\$ 553,776</b>	<b>\$ 452,642</b>	<b>\$ 676,242</b>	<b>\$ 689,029</b>	<b>\$ 223,345</b>	<b>\$ 207,513</b>

<sup>(1)</sup> There were no material intersegment revenues.

## Results of Business Segments and All Other

At and for the nine months ended September 30

(Dollars in millions)

	Total Corporation <sup>(1)</sup>		Consumer Banking		Global Wealth & Investment Management	
	2020	2019	2020	2019	2020	2019
Net interest income	\$ 33,493	\$ 37,201	\$ 18,743	\$ 21,253	\$ 4,186	\$ 4,917
Noninterest income	32,322	32,144	6,277	7,820	9,721	9,708
Total revenue, net of interest expense	65,815	69,345	25,020	29,073	13,907	14,625
Provision for credit losses	11,267	2,649	5,761	2,838	349	63
Noninterest expense	41,286	41,661	14,071	13,178	10,593	10,302
Income before income taxes	13,262	25,035	5,188	13,057	2,965	4,260
Income tax expense	838	4,599	1,271	3,199	726	1,044
<b>Net income</b>	<b>\$ 12,424</b>	<b>\$ 20,436</b>	<b>\$ 3,917</b>	<b>\$ 9,858</b>	<b>\$ 2,239</b>	<b>\$ 3,216</b>
<b>Period-end total assets</b>	<b>\$ 2,738,452</b>	<b>\$ 2,426,330</b>	<b>\$ 947,513</b>	<b>\$ 788,814</b>	<b>\$ 337,576</b>	<b>\$ 288,332</b>

	Global Banking		Global Markets		All Other	
	2020	2019	2020	2019	2020	2019
Net interest income	\$ 7,003	\$ 8,116	\$ 3,558	\$ 2,780	\$ 3	\$ 135
Noninterest income	7,205	7,226	11,301	9,409	(2,182)	(2,019)
Total revenue, net of interest expense	14,208	15,342	14,859	12,189	(2,179)	(1,884)
Provision for credit losses	4,849	356	233	(18)	75	(590)
Noninterest expense	6,910	6,697	8,598	8,109	1,114	3,375
Income before income taxes	2,449	8,289	6,028	4,098	(3,368)	(4,669)
Income tax expense	661	2,238	1,567	1,168	(3,387)	(3,050)
<b>Net income</b>	<b>\$ 1,788</b>	<b>\$ 6,051</b>	<b>\$ 4,461</b>	<b>\$ 2,930</b>	<b>\$ 19</b>	<b>\$ (1,619)</b>
<b>Period-end total assets</b>	<b>\$ 553,776</b>	<b>\$ 452,642</b>	<b>\$ 676,242</b>	<b>\$ 689,029</b>	<b>\$ 223,345</b>	<b>\$ 207,513</b>

<sup>(1)</sup> There were no material intersegment revenues.

The tables below present noninterest income and the associated components for the three and nine months ended September 30, 2020 and 2019 for each business segment, *All Other* and the total Corporation. For more information, see *Note 2 – Net Interest Income and Noninterest Income*.

### Noninterest Income by Business Segment and All Other

	Total Corporation		Consumer Banking		Global Wealth & Investment Management	
	Three Months Ended September 30					
(Dollars in millions)	2020	2019	2020	2019	2020	2019
<b>Fees and commissions:</b>						
<b>Card income</b>						
Interchange fees	\$ 1,172	\$ 963	\$ 840	\$ 802	\$ 10	\$ 13
Other card income	396	502	381	487	11	12
Total card income	1,568	1,465	1,221	1,289	21	25
<b>Service charges</b>						
Deposit-related fees	1,515	1,690	837	1,098	18	16
Lending-related fees	302	285	—	—	—	—
Total service charges	1,817	1,975	837	1,098	18	16
<b>Investment and brokerage services</b>						
Asset management fees	2,740	2,597	37	36	2,706	2,571
Brokerage fees	883	897	31	38	399	430
Total investment and brokerage services	3,623	3,494	68	74	3,105	3,001
<b>Investment banking fees</b>						
Underwriting income	1,239	740	—	—	93	89
Syndication fees	133	341	—	—	—	—
Financial advisory services	397	452	—	—	—	—
Total investment banking fees	1,769	1,533	—	—	93	89
<b>Total fees and commissions</b>	8,777	8,467	2,126	2,461	3,237	3,131
<b>Market making and similar activities</b>	1,689	2,118	—	1	13	27
<b>Other income (loss)</b>	(259)	35	23	231	59	137
<b>Total noninterest income</b>	\$ 10,207	\$ 10,620	\$ 2,149	\$ 2,693	\$ 3,309	\$ 3,295
	Global Banking		Global Markets		All Other <sup>(1)</sup>	
	Three Months Ended September 30					
	2020	2019	2020	2019	2020	2019
<b>Fees and commissions:</b>						
<b>Card income</b>						
Interchange fees	\$ 153	\$ 130	\$ 169	\$ 18	\$ —	\$ —
Other card income	3	3	—	—	1	—
Total card income	156	133	169	18	1	—
<b>Service charges</b>						
Deposit-related fees	597	533	53	38	10	5
Lending-related fees	248	230	55	54	(1)	1
Total service charges	845	763	108	92	9	6
<b>Investment and brokerage services</b>						
Asset management fees	—	—	—	—	(3)	(10)
Brokerage fees	15	9	440	419	(2)	1
Total investment and brokerage services	15	9	440	419	(5)	(9)
<b>Investment banking fees</b>						
Underwriting income	536	312	644	382	(34)	(43)
Syndication fees	78	163	55	178	—	—
Financial advisory services	356	427	40	25	1	—
Total investment banking fees	970	902	739	585	(33)	(43)
<b>Total fees and commissions</b>	1,986	1,807	1,456	1,114	(28)	(46)
<b>Market making and similar activities</b>	16	85	1,726	1,580	(66)	425
<b>Other income (loss)</b>	487	703	(7)	153	(821)	(1,189)
<b>Total noninterest income</b>	\$ 2,489	\$ 2,595	\$ 3,175	\$ 2,847	\$ (915)	\$ (810)

<sup>(1)</sup> *All Other* includes eliminations of intercompany transactions.

## Noninterest Income by Business Segment and All Other

	Total Corporation		Consumer Banking		Global Wealth & Investment Management	
	Nine Months Ended September 30					
(Dollars in millions)	2020	2019	2020	2019	2020	2019
<b>Fees and commissions:</b>						
<b>Card income</b>						
Interchange fees	\$ 2,794	\$ 2,827	\$ 2,129	\$ 2,334	\$ 26	\$ 42
Other card income	1,295	1,459	1,255	1,420	30	31
Total card income	4,089	4,286	3,384	3,754	56	73
<b>Service charges</b>						
Deposit-related fees	4,441	4,908	2,538	3,163	49	50
Lending-related fees	841	809	—	—	—	—
Total service charges	5,282	5,717	2,538	3,163	49	50
<b>Investment and brokerage services</b>						
Asset management fees	7,905	7,591	108	108	7,811	7,510
Brokerage fees	2,898	2,733	96	115	1,270	1,295
Total investment and brokerage services	10,803	10,324	204	223	9,081	8,805
<b>Investment banking fees</b>						
Underwriting income	3,610	2,198	—	—	292	296
Syndication fees	634	887	—	—	—	—
Financial advisory services	1,072	1,083	—	—	—	—
Total investment banking fees	5,316	4,168	—	—	292	296
Total fees and commissions	25,490	24,495	6,126	7,140	9,478	9,224
<b>Market making and similar activities</b>						
Other income (loss)	6,983	7,267	2	5	52	90
	(151)	382	149	675	191	394
Total noninterest income	\$ 32,322	\$ 32,144	\$ 6,277	\$ 7,820	\$ 9,721	\$ 9,708
	Global Banking		Global Markets		All Other <sup>(1)</sup>	
	Nine Months Ended September 30					
	2020	2019	2020	2019	2020	2019
<b>Fees and commissions:</b>						
<b>Card income</b>						
Interchange fees	\$ 337	\$ 390	\$ 301	\$ 61	\$ 1	\$ —
Other card income	10	8	—	—	—	—
Total card income	347	398	301	61	1	—
<b>Service charges</b>						
Deposit-related fees	1,694	1,557	134	120	26	18
Lending-related fees	685	668	156	141	—	—
Total service charges	2,379	2,225	290	261	26	18
<b>Investment and brokerage services</b>						
Asset management fees	—	—	—	—	(14)	(27)
Brokerage fees	45	26	1,487	1,296	—	1
Total investment and brokerage services	45	26	1,487	1,296	(14)	(26)
<b>Investment banking fees</b>						
Underwriting income	1,607	917	1,880	1,147	(169)	(162)
Syndication fees	357	427	277	461	—	(1)
Financial advisory services	948	984	123	99	1	—
Total investment banking fees	2,912	2,328	2,280	1,707	(168)	(163)
Total fees and commissions	5,683	4,977	4,358	3,325	(155)	(171)
<b>Market making and similar activities</b>						
Other income (loss)	88	190	7,059	5,623	(218)	1,359
	1,434	2,059	(116)	461	(1,809)	(3,207)
Total noninterest income	\$ 7,205	\$ 7,226	\$ 11,301	\$ 9,409	\$ (2,182)	\$ (2,019)

<sup>(1)</sup> All Other includes eliminations of intercompany transactions.

## Business Segment Reconciliations

(Dollars in millions)	Three Months Ended September 30		Nine Months Ended September 30	
	2020	2019	2020	2019
Segments' total revenue, net of interest expense	\$ 21,385	\$ 23,703	\$ 67,994	\$ 71,229
Adjustments <sup>(1)</sup> :				
ALM activities	(168)	(221)	425	(175)
Liquidating businesses, eliminations and other	(767)	(527)	(2,604)	(1,709)
FTE basis adjustment	(114)	(148)	(386)	(450)
<b>Consolidated revenue, net of interest expense</b>	<b>\$ 20,336</b>	<b>\$ 22,807</b>	<b>\$ 65,429</b>	<b>\$ 68,895</b>
Segments' total net income	4,584	7,370	12,405	22,055
Adjustments, net-of-tax <sup>(1)</sup> :				
ALM activities	(127)	(158)	316	(112)
Liquidating businesses, eliminations and other	424	(1,435)	(297)	(1,507)
<b>Consolidated net income</b>	<b>\$ 4,881</b>	<b>\$ 5,777</b>	<b>\$ 12,424</b>	<b>\$ 20,436</b>

	September 30	
	2020	2019
Segments' total assets	\$ 2,515,107	\$ 2,218,817
Adjustments <sup>(1)</sup> :		
ALM activities, including securities portfolio	1,018,385	686,301
Elimination of segment asset allocations to match liabilities	(857,787)	(546,529)
Other	62,747	67,741
<b>Consolidated total assets</b>	<b>\$ 2,738,452</b>	<b>\$ 2,426,330</b>

<sup>(1)</sup> Adjustments include consolidated income, expense and asset amounts not specifically allocated to individual business segments.

---

## Glossary

**Alt-A Mortgage** – A type of U.S. mortgage that is considered riskier than A-paper, or “prime,” and less risky than “subprime,” the riskiest category. Typically, Alt-A mortgages are characterized by borrowers with less than full documentation, lower credit scores and higher LTVs.

**Assets Under Management (AUM)** – The total market value of assets under the investment advisory and/or discretion of *GW/M* which generate asset management fees based on a percentage of the assets’ market values. AUM reflects assets that are generally managed for institutional, high net worth and retail clients, and are distributed through various investment products including mutual funds, other commingled vehicles and separate accounts.

**Banking Book** – All on- and off-balance sheet financial instruments of the Corporation except for those positions that are held for trading purposes.

**Brokerage and Other Assets** – Non-discretionary client assets which are held in brokerage accounts or held for safekeeping.

**Committed Credit Exposure** – Any funded portion of a facility plus the unfunded portion of a facility on which the lender is legally bound to advance funds during a specified period under prescribed conditions.

**Credit Derivatives** – Contractual agreements that provide protection against a specified credit event on one or more referenced obligations.

**Credit Valuation Adjustment (CVA)** – A portfolio adjustment required to properly reflect the counterparty credit risk exposure as part of the fair value of derivative instruments.

**Debit Valuation Adjustment (DVA)** – A portfolio adjustment required to properly reflect the Corporation’s own credit risk exposure as part of the fair value of derivative instruments and/or structured liabilities.

**Funding Valuation Adjustment (FVA)** – A portfolio adjustment required to include funding costs on uncollateralized derivatives and derivatives where the Corporation is not permitted to use the collateral it receives.

**Interest Rate Lock Commitment (IRLC)** – Commitment with a loan applicant in which the loan terms are guaranteed for a designated period of time subject to credit approval.

**Letter of Credit** – A document issued on behalf of a customer to a third party promising to pay the third party upon presentation of specified documents. A letter of credit effectively substitutes the issuer’s credit for that of the customer.

**Loan-to-value (LTV)** – A commonly used credit quality metric. LTV is calculated as the outstanding carrying value of the loan divided by the estimated value of the property securing the loan.

**Margin Receivable** – An extension of credit secured by eligible securities in certain brokerage accounts.

**Matched Book** – Repurchase and resale agreements or securities borrowed and loaned transactions where the overall asset and liability position is similar in size and/or maturity. Generally, these are entered into to accommodate customers where the Corporation earns the interest rate spread.

**Mortgage Servicing Rights (MSR)** – The right to service a mortgage loan when the underlying loan is sold or securitized. Servicing includes collections for principal, interest and escrow payments from borrowers and accounting for and remitting principal and interest payments to investors.

**Nonperforming Loans and Leases** – Includes loans and leases that have been placed on nonaccrual status, including nonaccruing loans whose contractual terms have been restructured in a manner that grants a concession to a borrower experiencing financial difficulties.

**Prompt Corrective Action (PCA)** – A framework established by the U.S. banking regulators requiring banks to maintain certain levels of regulatory capital ratios, comprised of five categories of capitalization: “well capitalized,” “adequately capitalized,” “undercapitalized,” “significantly undercapitalized” and “critically undercapitalized.” Insured depository institutions that fail to meet certain of these capital levels are subject to increasingly strict limits on their activities, including their ability to make capital distributions, pay management compensation, grow assets and take other actions.

**Subprime Loans** – Although a standard industry definition for subprime loans (including subprime mortgage loans) does not exist, the Corporation defines subprime loans as specific product offerings for higher risk borrowers.

**Troubled Debt Restructurings (TDRs)** – Loans whose contractual terms have been restructured in a manner that grants a concession to a borrower experiencing financial difficulties. Certain consumer loans for which a binding offer to restructure has been extended are also classified as TDRs.

**Value-at-Risk (VaR)** – VaR is a model that simulates the value of a portfolio under a range of hypothetical scenarios in order to generate a distribution of potential gains and losses. VaR represents the loss the portfolio is expected to experience with a given confidence level based on historical data. A VaR model is an effective tool in estimating ranges of potential gains and losses on our trading portfolios.

---

## Key Metrics

**Active Digital Banking Users** – Mobile and/or online users with activity over the last three months.

**Active Mobile Banking Users** – Mobile users with activity over the last three months.

**Book Value** – Ending common shareholders' equity divided by ending common shares outstanding.

**Deposit Spread** – Annualized net interest income divided by average deposits.

**Efficiency Ratio** – Noninterest expense divided by total revenue, net of interest expense.

**Financial advisor productivity** – Adjusted MLGWM annualized revenue divided by average financial advisors.

**Gross Interest Yield** – Effective annual percentage rate divided by average loans.

**Net Interest Yield** – Net interest income divided by average total interest-earning assets.

**Operating Margin** – Income before income taxes divided by total revenue, net of interest expense.

**Risk-adjusted Margin** – Difference between total revenue, net of interest expense, and net credit losses divided by average loans.

**Return on Average Allocated Capital** – Adjusted net income divided by allocated capital.

**Return on Average Assets** – Net income divided by total average assets.

**Return on Average Common Shareholders' Equity** – Net income applicable to common shareholders divided by average common shareholders' equity.

**Return on Average Shareholders' Equity** – Net income divided by average shareholders' equity.

---

## Acronyms

<b>ABS</b>	Asset-backed securities	<b>HELOC</b>	Home equity line of credit
<b>AFS</b>	Available-for-sale	<b>HQLA</b>	High Quality Liquid Assets
<b>ALM</b>	Asset and liability management	<b>HTM</b>	Held-to-maturity
<b>ARR</b>	Alternative reference rates	<b>IBOR</b>	Interbank Offered Rates
<b>AUM</b>	Assets under management	<b>IRLC</b>	Interest rate lock commitment
<b>AVM</b>	Automated valuation model	<b>ISDA</b>	International Swaps and Derivatives Association, Inc.
<b>BANA</b>	Bank of America, National Association	<b>LCR</b>	Liquidity Coverage Ratio
<b>BHC</b>	Bank holding company	<b>LHFS</b>	Loans held-for-sale
<b>BofAS</b>	BofA Securities, Inc.	<b>LIBOR</b>	London Interbank Offered Rate
<b>BofASE</b>	BofA Securities Europe SA	<b>LTV</b>	Loan-to-value
<b>bps</b>	basis points	<b>MBS</b>	Mortgage-backed securities
<b>CCAR</b>	Comprehensive Capital Analysis and Review	<b>MD&amp;A</b>	Management's Discussion and Analysis of Financial Condition and Results of Operations
<b>CDO</b>	Collateralized debt obligation	<b>MLGWM</b>	Merrill Lynch Global Wealth Management
<b>CECL</b>	Current expected credit losses	<b>MLI</b>	Merrill Lynch International
<b>CET1</b>	Common equity tier 1	<b>MLPCC</b>	Merrill Lynch Professional Clearing Corp
<b>CFTC</b>	Commodity Futures Trading Commission	<b>MLPF&amp;S</b>	Merrill Lynch, Pierce, Fenner & Smith Incorporated
<b>CLTV</b>	Combined loan-to-value	<b>MSA</b>	Metropolitan Statistical Area
<b>CVA</b>	Credit valuation adjustment	<b>MSR</b>	Mortgage servicing right
<b>DVA</b>	Debit valuation adjustment	<b>OCI</b>	Other comprehensive income
<b>ECL</b>	Expected credit losses	<b>OREO</b>	Other real estate owned
<b>EPS</b>	Earnings per common share	<b>PCA</b>	Prompt Corrective Action
<b>FHA</b>	Federal Housing Administration	<b>PPP</b>	Paycheck Protection Program
<b>FHLB</b>	Federal Home Loan Bank	<b>RWA</b>	Risk-weighted assets
<b>FICC</b>	Fixed income, currencies and commodities	<b>SBA</b>	Small Business Administration
<b>FICO</b>	Fair Isaac Corporation (credit score)	<b>SBLC</b>	Standby letter of credit
<b>FTE</b>	Fully taxable-equivalent	<b>SCB</b>	Stress capital buffer
<b>FVA</b>	Funding valuation adjustment	<b>SEC</b>	Securities and Exchange Commission
<b>GAAP</b>	Accounting principles generally accepted in the United States of America	<b>SLR</b>	Supplementary leverage ratio
<b>GLS</b>	Global Liquidity Sources	<b>TDR</b>	Troubled debt restructurings
<b>GNMA</b>	Government National Mortgage Association	<b>TLAC</b>	Total loss-absorbing capacity
<b>GSE</b>	Government-sponsored enterprise	<b>VaR</b>	Value-at-Risk
<b>G-SIB</b>	Global systemically important bank	<b>VIE</b>	Variable interest entity
<b>GWIM</b>	Global Wealth & Investment Management		

## Part II. Other Information

### Bank of America Corporation and Subsidiaries

#### Item 1. Legal Proceedings

See Litigation and Regulatory Matters in *Note 10 – Commitments and Contingencies* to the Consolidated Financial Statements, which is incorporated by reference in this Item 1, for litigation and regulatory disclosure that supplements the disclosure in *Note 13 – Commitments and Contingencies* to the Consolidated Financial Statements of the Corporation's 2019 Annual Report on Form 10-K.

#### Item 1A. Risk Factors

Our Annual Report on Form 10-K for the year ended December 31, 2019 (2019 Form 10-K) describes market, credit, geopolitical and business operations risk factors that could affect our businesses, results of operations or financial condition due to, among other things, "widespread health emergencies or pandemics." On March 11, 2020, the World Health Organization declared the outbreak of a strain of novel coronavirus disease, COVID-19, a global pandemic. As conditions and circumstances related to the COVID-19 pandemic evolved subsequent to our 2019 Form 10-K filing, the Corporation disclosed a risk factor in its Quarterly Reports on Form 10-Q for the periods ended March 31, 2020 and June 30, 2020 captioned "Coronavirus Disease 2019" to supplement the risk factors described in its 2019 Form 10-K. The following supplements the risk factors described in the Corporation's 2019 Form 10-K and Quarterly Reports on Form 10-Q for the periods ended March 31, 2020 and June 30, 2020.

#### Coronavirus Disease 2019

**The COVID-19 pandemic has caused a significant global economic downturn that has adversely affected, and is expected to continue to adversely affect, the Corporation's businesses and results of operations, and the duration and future impacts of the COVID-19 pandemic on the U.S. and/or global economy and the Corporation's businesses, results of operations and financial condition remain uncertain.**

The COVID-19 pandemic has resulted in authorities implementing numerous measures intended to contain the spread and impact of COVID-19, such as travel bans and restrictions, quarantines, shelter in place orders, and limitations on business activity, including closures. These measures have severely restricted economic activity, reduced economic output and resulted in a deterioration in economic conditions, globally and in the U.S. This has led to, among other things, high rates of unemployment and underemployment and caused volatility and disruptions in consumer spending and the global financial markets, including the energy and commodity markets. Although some of these restrictive measures have been eased in certain areas, many of the restrictive measures remain in place or have been reinstated, and in some cases additional restrictive measures are being or may need to be implemented. Businesses, market participants, our counterparties and clients, and the U.S. and global economy have been negatively impacted and may continue to be so for an extended period of time, as there remains significant uncertainty about the timing and strength of an economic recovery.

The negative economic conditions arising from the COVID-19 pandemic negatively impacted our financial results during the third quarter in various respects, including allowance for credit losses and noninterest expense. These negative economic conditions may have a continued adverse effect on

our businesses and results of operations, which could include, but not be limited to: decreased demand for and use of our products and services; protracted periods of historically low interest rates; lower fees, including asset management fees; lower sales and trading revenue due to decreased market liquidity resulting from heightened volatility; increased noninterest expense, including operational losses; and increased credit losses due to our customers' and clients' inability to fulfill contractual obligations and deterioration in the financial condition of our consumer and commercial borrowers, which may vary by region, sector or industry, that may increase our provision for credit losses and net charge-offs. Our provision for credit losses and net charge-offs may also continue to be impacted by volatility in the energy and commodity markets. Additionally, our liquidity and/or regulatory capital could be adversely impacted by customers' withdrawal of deposits, volatility and disruptions in the capital and credit markets, volatility in foreign exchange rates and customer draws on lines of credit. Continued adverse macroeconomic conditions caused by COVID-19 could also result in potential downgrades to our credit ratings, negative impacts to regulatory capital and liquidity and further restrictions on dividends and/or repurchases of our common stock, which could limit the capital we return to shareholders.

If we become unable to operate our business from remote locations including, for example, because of an internal or external failure of our information technology infrastructure, we experience increased rates of employee illness or unavailability, or governmental restrictions are placed on our employees or operations, this could also have an adverse effect on our business continuity status and result in disruption to our businesses. Additionally we rely on third parties who could experience adverse effects on their business continuity status and business interruptions, which could increase our risks and have an adverse impact on the Corporation's businesses. To the extent the COVID-19 pandemic continues to adversely affect the U.S. and/or global economy and/or adversely affects our businesses, results of operations or financial condition, it may also have the effect of increasing the likelihood and/or magnitude of other risks described in the section captioned "Risk Factors" in our 2019 Form 10-K or risks described in our other filings with the Securities and Exchange Commission.

In response to the economic and market conditions resulting from the COVID-19 pandemic, governments and regulatory authorities, including central banks, have acted and may take further action to provide fiscal and monetary stimuli to support the global economy. However, there can be no assurance that these measures will stimulate the global economy or avert continued recessionary conditions in markets or economies in which we conduct operations. Our participation in and execution of measures taken by governments and regulatory authorities could result in reputational harm and government actions and proceedings, and has resulted in, and may continue to result in, litigation, including class actions. Such actions may result in judgments, settlements, penalties, and fines adverse to the Corporation.

We continue to closely monitor the COVID-19 pandemic and related risks as they evolve globally and in the U.S. The magnitude and duration of the current outbreak of COVID-19, the likelihood of further surges of COVID-19 cases, the timing and availability of effective medical treatments and vaccines, future actions taken by governmental authorities and/or other



third parties in response to the COVID-19 pandemic, and its future direct and indirect effects on the global economy and our businesses, results of operation and financial condition are highly uncertain. The COVID-19 pandemic may cause prolonged

global or national recessionary economic conditions or longer lasting effects on economic conditions than currently exist, which could have a material adverse effect on our businesses, results of operations and financial condition.

## Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

The table below presents share repurchase activity for the three months ended September 30, 2020. The primary source of funds for cash distributions by the Corporation to its shareholders is dividends received from its banking subsidiaries. Each of the banking subsidiaries is subject to various regulatory policies and requirements relating to the payment of dividends, including requirements to maintain capital above regulatory minimums. All of the Corporation's preferred stock outstanding has preference over the Corporation's common stock with respect to payment of dividends.

	Total Common Shares Repurchased <sup>(1,2)</sup>	Weighted-Average Per Share Price	Total Shares Purchased as Part of Publicly Announced Programs	Remaining Buyback Authority Amounts
(Dollars in millions, except per share information; shares in thousands)				
July 1 - 31, 2020	5	\$ 23.70	—	\$ —
August 1 - 31, 2020	5,391	27.90	—	—
September 1 - 30, 2020	104	26.47	—	—
<b>Three months ended September 30, 2020</b>	<b>5,500</b>	<b>27.87</b>	<b>—</b>	

<sup>(1)</sup> Includes 1.5 million shares of the Corporation's common stock acquired by the Corporation in connection with satisfaction of tax withholding obligations on vested restricted stock or restricted stock units and certain forfeitures and terminations of employment-related awards and for potential re-issuance to certain employees under equity incentive plans.

<sup>(2)</sup> During the three months ended September 30, 2020, pursuant to the Board of Directors' authorization, the Corporation repurchased four million shares, or \$114 million, of its common stock solely to offset shares awarded under equity-based compensation plans. For more information, see Capital Management - CCAR and Capital Planning in the MD&A on page 23 and Note 11 - Shareholders' Equity to the Consolidated Financial Statements.

The Corporation did not have any unregistered sales of equity securities during the three months ended September 30, 2020.

## Item 6. Exhibits

Exhibit No.	Description	Notes
3.1	<a href="#">Restated Certificate of Incorporation, as amended and in effect on the date hereof</a>	1
3.2	<a href="#">Amended and Restated Bylaws of the Corporation as in effect on the date hereof</a>	1
31.1	<a href="#">Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>	1
31.2	<a href="#">Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>	1
32.1	<a href="#">Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>	1
32.2	<a href="#">Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>	1
101.INS	Inline XBRL Instance Document	2
101.SCH	Inline XBRL Taxonomy Extension Schema Document	1
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	1
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	1
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	1
101.DEF	Inline XBRL Taxonomy Extension Definitions Linkbase Document	1
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)	

<sup>(1)</sup> Filed herewith.

<sup>(2)</sup> The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.

## Signature

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Bank of America Corporation  
Registrant

Date: October 30, 2020

/s/ Rudolf A. Bless

Rudolf A. Bless  
Chief Accounting Officer

**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “Corporation”), hereby certifies that (i) the Certificate of Incorporation of the Corporation was originally filed on July 31, 1998, (ii) the Corporation was originally incorporated under the name “NationsBank (DE) Corporation,” which name was changed to “NationsBank Corporation” on September 25, 1998, which name was changed to “BankAmerica Corporation” on September 30, 1998, and which name was changed to “Bank of America Corporation” on April 28, 1999, (iii) this Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of the Corporation’s Certificate of Incorporation as theretofore amended or supplemented and there is no discrepancy between the provisions of the Certificate of Incorporation as theretofore amended and supplemented and the provisions of this Restated Certificate of Incorporation, (iv) this Restated Certificate of Incorporation has been duly adopted in accordance with Section 245 of the General Corporation Law of the State of Delaware, and (v) the Certificate of Incorporation of the Corporation is hereby integrated and restated to read in its entirety as follows:

1. The name of the Corporation is Bank of America Corporation.

2. The purposes for which the Corporation is organized are to engage in any lawful act or activity for which corporations may be organized and incorporated under the General Corporation Law of the State of Delaware.

3. The number of shares, par value \$.01 per share, the Corporation is authorized to issue is Twelve Billion Nine Hundred Million (12,900,000,000), divided into the following classes:

<b>Class</b>	<b>Number of Shares</b>
Common...	12,800,000,000
Preferred.....	100,000,000.

The class of common (“Common Stock”) has unlimited voting rights and, after satisfaction of claims, if any, of the holders of preferred shares, is entitled to receive the net assets of the Corporation upon distribution.

The Board of Directors of the Corporation shall have full power and authority to establish one or more series within the class of preferred shares (the “Preferred Shares”), to define the designations, preferences, limitations and relative rights (including conversion rights) of shares within such class and to determine all variations between series.

The Board of Directors of the Corporation has designated, established and authorized the following series of Preferred Shares:

(a) 7% Cumulative Redeemable Preferred Stock, Series B.

A. Designation.

The designation of this series is “7% Cumulative Redeemable Preferred Stock, Series B” (hereinafter referred to as the “Series B Preferred Stock”) and the number of shares constituting such series is Thirty-Five Thousand Forty-Five (35,045). Shares of Series B Preferred Stock shall have a stated value of \$100.00 per share.

B. Dividends.

The holders of record of the shares of the Series B Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors of the Corporation, out of any funds legally available for such purpose, cumulative cash dividends at an annual dividend rate per share of 7% of the stated value thereof, which amount if \$7.00 per annum, per share, and no more. Such dividends shall be payable each calendar quarter at the rate of \$1.75 per share on such dates as shall be fixed

by resolution of the Board of Directors of the Corporation. The date from which dividends on such shares shall be cumulative shall be the first day after said shares are issued. Accumulations of dividends shall not bear interest. No cash dividend shall be declared, paid or set apart for any shares of Common Stock unless all dividends on all shares of the Series B Preferred Stock at the time outstanding for all past dividend periods and for the then current dividend shall have been paid, or shall have been declared and a sum sufficient for the payment thereof, shall have been set apart. Subject to the foregoing provisions of this paragraph B, cash dividends or other cash distributions as may be determined by the Board of Directors of the Corporation may be declared and paid upon the shares of the Common Stock of the Corporation from time to time out of funds legally available therefor, and the shares of the Series B Preferred Stock shall not be entitled to participate in any such cash dividend or other such cash distribution so declared and paid or made on such shares of Common Stock.

C. Redemption.

From and after October 31, 1988, any holder may, by written request, call upon the Corporation to redeem all or any part of said holder's shares of said Series B Preferred Stock at a redemption price of \$100.00 per share plus accumulated unpaid dividends to the date said request for redemption is received by the Corporation and no more (the "Redemption Price"). Any such request for redemption shall be accompanied by the certificates for which redemption is requested, duly endorsed or with appropriate stock power attached, in either case with signature guaranteed. Upon receipt by the Corporation of any such request for redemption from any holder of the Series B Preferred Stock, the Corporation shall forthwith redeem said stock at the Redemption Price, provided that: (i) full cumulative dividends have been paid or declared and set apart for payment upon all shares of any series of preferred stock ranking superior to the Series B Preferred Stock as to dividends or other distributions (collectively the "Superior Stock"); and (ii) the Corporation is not then in default or in arrears with respect to any sinking or analogous fund or call for tenders obligation or agreement for the purchase, redemption or retirement of any shares of Superior Stock. In the event that, upon receipt of a request for redemption, either or both of the conditions set forth in clauses (i) and (ii) above are not met, the Corporation shall forthwith return said request to the submitting shareholder along with a statement that the Corporation is unable to honor such request and explanation of the reasons therefor. From and after the receipt by the Corporation of a request for redemption from any holder of said Series B Preferred Stock, which request may be honored consistent with the foregoing provisions, all rights of such holder in the Series B Preferred Stock for which redemption is requested shall cease and terminate, except only the right to receive the Redemption Price thereof, but without interest.

D. Liquidation Preference.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Series B Preferred Stock shall be entitled to receive, subject to the provisions of paragraph G and before any payment shall be made to the holders of the shares of Common Stock, the amount of \$100.00 per share, plus accumulated dividends. After payment to the holders of the Series B Preferred Stock of the full amount as aforesaid, the holders of the Series B Preferred Stock as such shall have no right or claim to any of the remaining assets which shall be distributed ratably to the holders of the Common Stock. If, upon any such liquidation, dissolution or winding up, the assets available therefor are not sufficient to permit payments to the holders of Series B Preferred Stock of the full amount as aforesaid, then subject to the provisions of paragraph G, the holders of the Series B Preferred Stock then outstanding shall share ratably in the distribution of assets in accordance with the sums which would be payable if such holders were to receive the full amounts as aforesaid.

E. Sinking Fund.

There shall be no sinking fund applicable to the shares of Series B Preferred Stock.

F. Conversion.

The shares of Series B Preferred Stock shall not be convertible into any shares of Common Stock or any other class of shares, nor exchanged for any shares of Common Stock or any other class of shares.

G. Superior Stock.

The Corporation may issue stock with preferences superior or equal to the shares of the Series B Preferred Stock without the consent of the holders thereof.

H. Voting Rights.

Each share of the Series B Preferred Stock shall be entitled to equal voting rights, share for share, with each share of the Common Stock.

(b) ESOP Convertible Preferred Stock, Series C.

The shares of the ESOP Convertible Preferred Stock, Series C, of the Corporation shall be designated "ESOP Convertible Preferred Stock, Series C," and the number of shares constituting such series shall be 1,027,270. The ESOP Convertible Preferred Stock, Series C, shall hereinafter be referred to as the "ESOP Preferred Stock."

#### A. Special Purpose Restricted Transfer Issue.

Shares of ESOP Preferred Stock shall be issued only to a trustee acting on behalf of an employee stock ownership plan or other employee benefit plan of the Corporation or any subsidiary of the Corporation. In the event of any transfer of shares of ESOP Preferred Stock to any person other than any such plan trustee or the Corporation, the shares of ESOP Preferred Stock so transferred, upon such transfer and without any further action by the Corporation or the holder, shall be automatically converted into shares of Common Stock on the terms otherwise provided for the conversion of shares of ESOP Preferred Stock into shares of Common Stock pursuant to paragraph E hereof and no such transferee shall have any of the voting powers, preferences and relative, participating, optional or special rights ascribed to the shares of ESOP Preferred Stock hereunder but, rather, only the powers and rights pertaining to the Common Stock into which such shares of ESOP Preferred Stock shall be so converted. Certificates representing shares of ESOP Preferred Stock shall be legended to reflect such restrictions on transfer. Notwithstanding the foregoing provisions of this paragraph A, shares of ESOP Preferred Stock (i) may be converted into shares of Common Stock as provided by paragraph E hereof and the shares of Common Stock issued upon such conversion may be transferred by the holder thereof as permitted by law and (ii) shall be redeemable by the Corporation upon the terms and conditions provided by paragraphs F, G and H hereof.

#### B. Dividends and Distributions.

(1) Subject to the provisions for adjustment hereinafter set forth, the holders of shares of ESOP Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available therefor, cash dividends ("Preferred Dividends") in an amount equal to \$3.30 per share per annum, and no more, payable semi-annually, one-half on the first day of January and one-half on the first day of July of each year (each a "Dividend Payment Date") to holders of record at the start of business on such Dividend Payment Date. Preferred Dividends shall accrue on a daily basis whether or not the Corporation shall have earnings or surplus at the time, but Preferred Dividends on the shares of ESOP Preferred Stock for any period less than a full semi-annual period between Dividend Payment Dates shall be computed on the basis of a 360-day year of 30-day months. Accumulated but unpaid Preferred Dividends shall accumulate as of the Dividend Payment Date on which they first become payable, but no interest shall accrue on accumulated but unpaid Preferred Dividends.

(2) So long as any ESOP Preferred Stock shall be outstanding, no dividend shall be declared or paid or set apart for payment on any other series of stock ranking on a parity with the ESOP Preferred Stock as to dividends, unless there shall also be or have been declared and paid or set apart for payment on the ESOP Preferred Stock, like dividends for all dividend payment periods of the ESOP Preferred Stock ending on or before the dividend payment date of such parity stock, ratably in proportion to the respective amount of dividends accumulated and unpaid through such dividend payment period on the ESOP Preferred Stock and accumulated and unpaid or payable on such parity stock through the dividend payment period on such parity stock next preceding such Dividend Payment Date. In the event that full cumulative dividends on the ESOP Preferred Stock have not been declared and paid or set apart for payment when due, the Corporation shall not declare or pay or set apart for payment any dividends or make any other distributions on, or make any payment on account of the purchase, redemption or other retirement of any other class of stock or series thereof of the Corporation ranking, as to dividends or as to distributions in the event of a liquidation, dissolution or winding-up of the Corporation, junior to the ESOP Preferred Stock until full cumulative dividends on the ESOP Preferred Stock shall have been paid or declared and provided for; provided, however, that the foregoing shall not apply to (i) any dividend payable solely in any shares of any stock ranking, as to dividends or as to distributions in the event of the liquidation, dissolution or winding-up of the Corporation, junior to the ESOP Preferred Stock, or (ii) the acquisition of shares of any stock ranking, as to dividends or as to distributions in the event of a liquidation, dissolution or winding-up of the Corporation, junior to the ESOP Preferred Stock either (A) pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted or (B) in exchange solely for shares of any other stock ranking junior to the ESOP Preferred Stock.

#### C. Voting Rights.

The holders of shares of ESOP Preferred Stock shall have the following voting rights:

(1) The holders of ESOP Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of the ESOP Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of ESOP Preferred Stock could be converted on the record date for determining the shareholders entitled to vote, rounded to the nearest whole vote; it being understood that whenever the "Conversion Ratio" (as defined in paragraph E hereof) is adjusted as provided in paragraph I hereof, the voting rights of the ESOP Preferred Stock shall also be similarly adjusted.

(2) Except as otherwise required by the General Corporation Law of the State of Delaware or set forth in paragraph C(1), holders of ESOP Preferred Stock shall have no special voting rights and their consent shall not be required for the taking of any corporate action.

**D. Liquidation, Dissolution or Winding-Up.**

(1) Upon any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the holders of ESOP Preferred Stock shall be entitled to receive out of the assets of the Corporation which remain after satisfaction in full of all valid claims of creditors of the Corporation and which are available for payment to shareholders and subject to the rights of the holders of any stock of the Corporation ranking senior to or on a parity with the ESOP Preferred Stock in respect of distributions upon liquidation, dissolution or winding-up of the Corporation, before any amount shall be paid or distributed among the holders of Common Stock or any other shares ranking junior to the ESOP Preferred Stock in respect of the distribution upon liquidation, dissolution or winding-up of the Corporation, liquidating distributions in the amount of \$42.50 per share, plus an amount equal to all accrued and unpaid dividends thereon to the date fixed for distribution, and no more. If upon any liquidation, dissolution or winding-up of the Corporation, the amounts payable with respect to the ESOP Preferred Stock and any other stock ranking as to any such distribution on a parity with the ESOP Preferred Stock are not paid in full, the holders of the ESOP Preferred Stock and such other stock shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled. After payment of the full amount to which they are entitled as provided by the foregoing provisions of this paragraph D(1), the holders of shares of ESOP Preferred Stock shall not be entitled to any further right or claim to any of the remaining assets of the Corporation.

(2) Neither the merger or consolidation of the Corporation with or into any other corporation, nor the merger or consolidation of any other corporation with or into the Corporation, nor the sale, transfer or lease of all or any portion of the assets of the Corporation, shall be deemed to be a dissolution, liquidation or winding-up of the affairs of the Corporation for purposes of this paragraph D, but the holders of ESOP Preferred Stock shall nevertheless be entitled in the event of any such merger or consolidation to the rights provided by paragraph H hereof.

(3) Written notice of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable to holders of ESOP Preferred Stock in such circumstances shall be payable, shall be given by first-class mail, postage prepaid, mailed not less than twenty (20) days prior to any payment date stated therein, to the holders of ESOP Preferred Stock, at the address shown on the books of the Corporation or any transfer agent for the ESOP Preferred Stock.

**E. Conversion into Common Stock.**

(1) A holder of shares of ESOP Preferred Stock shall be entitled, at any time prior to the close of business on the date fixed for redemption of such shares pursuant to paragraph

F, G or H hereof, to cause any or all of such shares to be converted into shares of Common Stock at a conversion rate equal to the ratio of 1.0 share of ESOP Preferred Stock to 1.68 shares of Common Stock (as adjusted as hereinafter provided, the "Conversion Ratio"). The Conversion Ratio set forth above is subject to adjustment pursuant to this Certificate of Incorporation.

(2) Any holder of shares of ESOP Preferred Stock desiring to convert such shares into shares of Common Stock shall surrender the certificate or certificates representing the shares of ESOP Preferred Stock being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the ESOP Preferred Stock or such office or offices in the continental United States of an agent for conversion as may from time to time be designated by notice to the holders of the ESOP Preferred Stock by the Corporation or the transfer agent for the ESOP Preferred Stock, accompanied by written notice of conversion. Such notice to conversion shall specify (i) the number of shares of ESOP Preferred Stock to be converted and the name or names in which such holder wishes the certificate or certificates for Common Stock and for any shares of ESOP Preferred Stock not to be so converted to be issued, and (ii) the address to which such holder wishes delivery to be made of such new certificates to be issued upon such conversion.

(3) Upon surrender of a certificate representing a share or shares of ESOP Preferred Stock for conversion, the Corporation shall issue and send by hand delivery (with receipt to be acknowledged) or by first-class mail, postage prepaid, to the holder thereof or to such holder's designee, at the address designated by such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled upon conversion. In the event that there shall have been surrendered a certificate or certificates representing shares of ESOP Preferred Stock, only part of which are to be converted, the Corporation shall issue and deliver to such holder or such holder's designee a new certificate or certificates representing the number of shares of ESOP Preferred Stock which shall not have been converted.

(4) The issuance by the Corporation of shares of Common Stock upon a conversion of shares of ESOP Preferred Stock into shares of Common Stock made at the option of the holder thereof shall be effective as of the earlier of (i) the delivery

to such holder or such holder's designee of the certificate or certificates representing the shares of Common Stock issued upon conversion thereof or (ii) the commencement of business on the second business day after the surrender of the certificate or certificates for the shares of ESOP Preferred Stock to be converted, duly assigned or endorsed for transfer to the corporation (or accompanied by duly executed stock powers relating thereto) as provided hereby. On and after the effective date of conversion, the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock, but no allowance or adjustment shall be made in respect of dividends payable to holders of Common Stock in respect of any period prior to such effective date. The Corporation shall not be obligated to pay any dividends which shall have been declared and shall be payable to holders of shares of ESOP Preferred Stock on a Dividend Payment Date if such Dividend Payment

Date for such dividend shall coincide with or be on or subsequent to the effective date of conversion of such shares.

(5) The Corporation shall not be obligated to deliver to holders of ESOP Preferred Stock any fractional share or shares of Common Stock issuable upon any conversion of such shares of ESOP Preferred Stock, but in lieu thereof may make a cash payment in respect thereof in any manner permitted by law.

(6) The Corporation shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of shares of ESOP Preferred Stock as herein provided, free for any preemptive rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all shares of ESOP Preferred Stock then outstanding. The Corporation shall prepare and shall use its best efforts to obtain and keep in force such governmental or regulatory permits or other authorizations as may be required by law, and shall comply with all requirements as to registration or qualification of the Common Stock, in order to enable the Corporation lawfully to issue and deliver to each holder of record of ESOP Preferred Stock such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all shares of ESOP Preferred Stock then outstanding and convertible into shares of Common Stock.

#### F. Redemption At the Option of the Corporation.

(1) The ESOP Preferred Stock shall be redeemable, in whole or in part, at the option of the Corporation at any time, at a redemption price per share (except as to redemption pursuant to paragraph F(3)) of \$42.83 prior to July 1, 1999 and \$42.50 thereafter, plus, in each case, an amount equal to all accrued and unpaid dividends thereon to the date fixed for redemption. Payment of the redemption price shall be made by the Corporation in cash or shares of Common Stock, or a combination thereof, as permitted by paragraph F(5). From and after the date fixed for redemption, dividends on shares of ESOP Preferred Stock called for redemption will cease to accrue, such shares will no longer be deemed to be outstanding and all rights in respect of such shares of the Corporation shall cease, except the right to receive the redemption price. If less than all of the outstanding shares of ESOP Preferred Stock are to be redeemed, the Corporation shall either redeem a portion of the shares of each holder determined pro rata based on the number of shares held by each holder or shall select the shares to be redeemed by lot, as may be determined by the Board of Directors of the Corporation.

(2) Unless otherwise required by law, notice of redemption will be sent to the holders of ESOP Preferred Stock at the address shown on the books of the Corporation or any transfer agent for the ESOP Preferred Stock by first-class mail, postage prepaid, mailed not less than twenty (20) days nor more than sixty (60) days prior to the redemption date. Each such notice shall state: (i) the redemption date; (ii) the total number of shares of the ESOP Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price (v) that dividends on the shares to be redeemed will cease to accrue on such redemption date; and (vi) the conversion rights of the shares to be redeemed, the period within which conversion rights may be exercised, and the Conversion Ratio and number of shares of Common Stock issuable upon conversion of a share of ESOP Preferred Stock at the time. These notice provisions may be supplemented if necessary in order to comply with optional redemption provisions for preferred stock which may be required under the Internal Revenue Code of 1986, as amended, or the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Upon surrender of the certificates for any shares so called for redemption and not previously converted (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the date fixed for redemption and at the applicable redemption price set forth in this paragraph F.

(3) In the event of a change in the federal tax law of the United States of America which has the effect of precluding the Corporation from claiming any of the tax deductions for dividends paid on the ESOP Preferred Stock when such dividends are used as provided under Section 404(k)(2) of the Internal Revenue Code of 1986, as amended and in effect on the date shares of ESOP Preferred Stock are initially issued, the Corporation may, within 180 days following the effective date of such tax legislation and implementing regulations of the Internal Revenue Service, if any, in its sole discretion and notwithstanding anything to the contrary in paragraph F(1), elect to redeem any or all such shares for the amount payable in respect of the shares upon liquidation of the Corporation pursuant to paragraph D.

(4) In the event the C&S/Sovran Retirement Savings, ESOP and Profit Sharing Plan (as amended, together with any successor plan, the "Plan") is terminated, the Corporation shall, notwithstanding anything to the contrary in paragraph F(1), redeem all shares of ESOP Preferred Stock for the amount payable in respect of the shares upon redemption of the ESOP Preferred Stock pursuant to paragraph F(1) hereof).

(5) The Corporation, at its option, may make payment of the redemption price required upon redemption of shares of ESOP Preferred Stock in case or in shares of Common Stock, or in a combination of such shares and cash, any such shares to be valued for such purpose at their Fair Market Value (as defined in paragraph I(7) hereof).

#### G. Other Redemption Rights.

Shares of ESOP Preferred Stock shall be redeemed by the Corporation at a price which is the greater of the Conversion Value (as defined in paragraph I) of the ESOP Preferred Stock on the date fixed for redemption or a redemption price of \$42.50 per share plus accrued and unpaid dividends thereon to the date fixed for redemption, for shares of Common Stock (any such shares of Common Stock to be valued for such purpose as provided by paragraph F(5) hereof), at the option of the holder, at any time and from time to time upon notice to the Corporation given not less than five (5) business days prior to the date fixed by the Corporation in such notice for such redemption, when and to the extent necessary (i) to provide for distributions required to be made under, or to satisfy an investment election provided to participants in accordance with, the Plan to participants in the Plan or (ii) to make payment of principal, interest or premium due and payable (whether as scheduled or upon acceleration) on any indebtedness incurred by the holder or Trustee under the Plan for the benefit of the Plan.

#### H. Consolidation, Merger, etc.

(1) In the event that the Corporation shall consummate any consolidation or merger or similar transaction, however named, pursuant to which the outstanding shares of Common Stock are by operation of law exchanged solely for or changed, reclassified or converted solely into stock of any successor or resulting company (including the Corporation and any company that directly or indirectly owns all of the outstanding capital stock of such successor or resulting company) that constitutes "qualifying employer securities" with respect to a holder of ESOP Preferred Stock within the meaning of Section 409(1) of the Internal Revenue Code of 1986, as amended, and Section 407(d)(5) of ERISA, or any successor provisions of law, and, if applicable, for a cash payment in lieu of fractional shares, if any, the shares of ESOP Preferred Stock of such holder shall be assumed by and shall become preferred stock of such successor or resulting company, having in respect of such company insofar as possible the same powers, preferences and relative, participating, optional or other special rights (including the redemption rights provided by paragraphs F, G and H hereof), and the qualifications, limitations or restrictions thereon, that the ESOP Preferred Stock had immediately prior to such transaction, except that after such transaction each share of the ESOP Preferred Stock shall be convertible, otherwise on the terms and conditions provided by paragraph E hereof, into the qualifying employer securities so receivable by a holder of the number of shares of Common Stock into which such shares of ESOP Preferred Stock could have been converted immediately prior to such transaction if such holder of Common Stock failed to exercise any rights of election to receive any kind or amount of stock, securities, cash or other property (other than such qualifying employer securities and a cash payment, if applicable, in lieu of fractional shares) receivable upon such transaction (provided that, if the kind or amount of qualifying employer securities receivable upon such transaction is not the same for each non-electing share, then the kind and amount of qualifying employer securities receivable upon such transaction for each non-electing share shall be the kind and amount so receivable per share by a plurality of the non-electing shares). The rights of the ESOP Preferred Stock as preferred stock of such successor or resulting company shall successively be subject to adjustments pursuant to paragraph I hereof after any such transaction as nearly equivalent to the adjustments provided for by such paragraph prior to such transaction. The Corporation shall not consummate any such merger, consolidation or similar transaction unless all then outstanding shares of the ESOP Preferred Stock shall be assumed and authorized by the successor or resulting company as aforesaid.

(2) In the event that the Corporation shall consummate any consolidation or merger or similar transaction, however named, pursuant to which the outstanding shares of Common Stock are by operation of law exchanged for or changed, reclassified or converted into other stock or securities or cash or any other property, or any combination thereof, other than any such consideration which is constituted solely of qualifying employer securities (as referred to in paragraph H(1)) and cash payments, if applicable, in lieu of fractional shares, all outstanding shares of ESOP Preferred Stock shall, without any action on the part of the Corporation or any holder thereof (but subject to paragraph H(3)), be deemed converted by virtue of such merger, consolidation or similar transaction immediately prior to such consummation into the number of shares of Common Stock into which such shares of ESOP Preferred Stock could have been converted at such time, and each share of ESOP Preferred Stock shall, by virtue of such transaction and on the same terms as apply to the holders of Common Stock, be converted into or exchanged for the aggregate amount of stock, securities, cash or other property (payable in like kind) receivable by a holder of the number of shares of Common Stock into which such shares of ESOP Preferred Stock could have been converted immediately prior to such transaction if such holder of Common Stock failed to exercise any rights of election as to the kind or amount of stock, securities, cash or other property receivable upon such transaction (provided that, if the kind



or amount of stock, securities, cash or other property receivable upon such transaction is not the same for each non-electing share, then the kind and amount of stock, securities, cash or other property receivable upon such transaction for each non-electing share shall be the kind and amount so receivable per share by a plurality of the non-electing shares).

(3) In the event the Corporation shall enter into any agreement providing for any consolidation or merger or similar transaction described in paragraph H(2), then the Corporation shall as soon as practicable thereafter (and in any event at least ten (10) business days before consummation of such transaction) give notice of such agreement and the material terms thereof to each holder of ESOP Preferred Stock and each such holder shall have the right to elect, by written notice to the Corporation, to receive, upon consummation of such transaction (if and when such transaction is consummated), from the Corporation or the successor of the Corporation, in redemption and retirement of such ESOP Preferred Stock, a cash payment equal to the amount payable in respect of shares of ESOP Preferred Stock upon redemption pursuant to paragraph F(1) hereof. No such notice of redemption shall be effective unless given to the Corporation prior to the close of business on the second business day prior to consummation of such transaction, unless the Corporation or the successor of the Corporation shall waive such prior notice, but any notice of redemption so given prior to such time may be withdrawn by notice of withdrawal given to the Corporation prior to the close of business on the second business day prior to consummation of such transaction.

#### I. Anti-dilution Adjustments.

(1) In the event the Corporation shall, at any time or from time to time while any of the shares of the ESOP Preferred Stock are outstanding, (i) pay a dividend or make a distribution in respect of the Common Stock in shares of Common Stock, (ii) subdivide the outstanding shares of Common Stock, or (iii) combine the outstanding shares of Common Stock into a smaller number of shares, in each case whether by reclassification of shares, recapitalization of the Corporation (including a recapitalization effected by a merger or consolidation to which paragraph H hereof does not apply) or otherwise, the Conversion Ratio in effect immediately prior to such action shall be adjusted by multiplying such Conversion Ratio by the fraction the numerator of which is the number of shares of Common Stock outstanding immediately before such event and the denominator of which is the number of shares of Common Stock outstanding immediately after such event. An adjustment made pursuant to this paragraph I(1) shall be given effect, upon payment of such a dividend or distribution, as of the record date for the determination of shareholders entitled to receive such dividend or distribution (on a retroactive basis) and in the case of a subdivision or combination shall become effective immediately as of the effective date thereof.

(2) In the event that the Corporation shall, at any time or from time to time while any of the shares of ESOP Preferred Stock are outstanding, issue to holders of shares of Common Stock as a dividend or distribution, including by way of a reclassification of shares or a recapitalization of the Corporation, any right or warrant to purchase shares of Common Stock (but not including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock) at a purchase price per share less than the Fair Market Value (as hereinafter defined) of a share of Common Stock on the date of issuance of such right or warrant, then, subject to the provisions of paragraphs I(5) and I(6), the Conversion Ratio shall be adjusted by multiplying such Conversion Ratio by the fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Common Stock which could be purchased at the Fair Market Value of a share of Common Stock at the time of such issuance for the maximum aggregate consideration payable upon exercise in full of all such rights or warrants and the denominator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Common Stock that could be acquired upon exercise in full of all such rights and warrants.

(3) In the event the Corporation shall, at any time and from time to time while any of the shares of ESOP Preferred Stock are outstanding, issue, sell or exchange shares of Common Stock (other than pursuant to any right or warrant to purchase or acquire shares of Common Stock (including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock) and other than pursuant to any dividend reinvestment plan or employee or director incentive or benefit plan or arrangement, including any employment, severance or consulting agreement, of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted) for a consideration having a Fair Market Value on the date of such issuance, sale or exchange less than the Fair Market Value of such shares on the date of such issuance, sale or exchange, then, subject to the provisions of paragraphs I(5) and I(6), the Conversion Ratio shall be adjusted by multiplying such Conversion Ratio by the fraction the numerator of which shall be the sum of (i) the Fair Market Value of all the shares of Common Stock outstanding on the day immediately preceding the first public announcement of such issuance, sale or exchange plus (ii) the Fair Market Value of the consideration received by the Corporation in respect of such issuance, sale or exchange of shares of Common Stock, and the denominator of which shall be the product of (i) the Fair Market Value of a share of Common Stock on the day immediately preceding the first public announcement of such issuance, sale or exchange multiplied by (ii) the sum of the number of shares of Common Stock outstanding on such day plus the number of shares of Common Stock so issued, sold or exchanged by the Corporation. In the event the Corporation shall, at any time or from time to time while any shares of ESOP Preferred Stock are outstanding, issue, sell or exchange any right or warrant to purchase or acquire shares of Common Stock (including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock), other

than any such issuance to holders of shares of Common Stock as a dividend or distribution (including by way of a reclassification of shares or a recapitalization of the Corporation) and other than pursuant to any dividend reinvestment plan or employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted, for a consideration having a Fair Market Value of the date of such issuance, sale or exchange less than the Non-Dilutive Amount (as hereinafter defined), then, subject to the provisions of paragraphs I(5) and (6), the Conversion Ratio shall be adjusted by multiplying such Conversion Ratio by a fraction the numerator of which shall be the sum of (a) the Fair Market Value of all the shares of Common Stock outstanding on the day immediately preceding the first public announcement of such issuance, sale or exchange plus (b) the Fair Market Value of the consideration received by the Corporation in respect of such issuance, sale or exchange of such right or warrant plus (c) the Fair Market Value at the time of such issuance of the consideration which the Corporation would receive upon exercise in full of all such rights or warrants, and the denominator of which shall be the product of (a) Fair Market Value of a share of Common Stock on the day immediately preceding the first public announcement of such issuance, sale or exchange multiplied by (b) the sum of the number of shares of Common Stock outstanding on such day plus the maximum number of shares of Common Stock which could be acquired pursuant to such right or warrant at the time of the issuance, sale or exchange of such right or warrant (assuming shares of Common Stock could be acquired pursuant to such right or warrant at such time).

(4) In the event the Corporation shall, at any time or from time to time while any of the shares of ESOP Preferred Stock are outstanding, make any Extraordinary Distribution (as hereinafter defined) in respect of the Common Stock, whether by dividend, distribution, reclassification of shares or recapitalization of the Corporation (including a recapitalization or reclassification effected by a merger or consolidation to which paragraph H hereof does not apply) or effect a Pro Rata Repurchase (as herein defined) of Common Stock, the Conversion Ratio in effect immediately prior to such Extraordinary Distribution or Pro Rata Repurchase shall, subject to paragraphs I(5) and I(6), be adjusted by multiplying such Conversion Ratio by a fraction the numerator of which shall be (a) the product of (i) the number of shares of Common Stock outstanding immediately before such Extraordinary Distribution or Pro Rata Repurchase multiplied by (ii) the Fair Market Value (as herein defined) of a share of Common Stock on the Valuation Date (as hereinafter defined) with respect to an Extraordinary Distribution, or on the applicable expiration date (including all extensions thereof) of any tender offer which is a Pro Rata Repurchase, or on the date of purchase with respect to any Pro Rata Repurchase which is not a tender offer, as the case may be, minus (b) the Fair Market Value of the Extraordinary Distribution or the aggregate purchase price of the Pro Rata Repurchase, as the case may be, and the denominator of which shall be the product of (i) the number of shares of Common Stock outstanding immediately before such Extraordinary Distribution or Pro Rata Repurchase minus, in the case of a Pro Rata Repurchase, the number of shares of Common Stock repurchased by the Corporation multiplied by (ii) the Fair Market Value of a share of Common Stock on the record date with respect to an Extraordinary Distribution or on the applicable expiration date (including all extensions thereof) of any tender offer which is a Pro Rata Repurchase or on the date of purchase with respect to any Pro Rata Repurchase which is not a tender offer, as the case may be. The Corporation shall send each holder of ESOP Preferred Stock (x) notice of its intent to make any Extraordinary Distribution and (y) notice of any offer by the Corporation to make a Pro Rata Repurchase, in each case at the same time as, or as soon as practicable after, such offer is first communicated (including by announcement of a record date in accordance with the rules of any stock exchange on which the Common Stock is listed or admitted to trading) to holders of Common Stock. Such notice shall indicate the intended record date and the amount and nature of such dividend or distribution, or the number of share subject to such offer for a Pro Rata Repurchase and the purchase price payable by the Corporation pursuant to such offer, as well as the Conversion Ratio and the number of share of Common Stock into which a share of ESOP Preferred Stock may be converted at such time.

(5) Notwithstanding any other provision of this paragraph I, the Corporation shall not be required to make any adjustment of the Conversion Ratio unless such adjustment would require an increase or decrease of at least one percent (1%) in the Conversion Ratio. Any lesser adjustment shall be carried forward and shall be made no later than the time of, and together with, the next subsequent adjustment which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least one percent (1%) in the Conversion Ratio.

(6) If the Corporation shall make any dividend or distribution on the Common Stock or issue any Common Stock, other capital stock or other security of the Corporation or any rights or warrants to purchase or acquire any such security, which transaction does not result in an adjustment to the Conversion Ratio pursuant to the foregoing provision of this paragraph I, the Board of Directors of the Corporation shall consider whether such action is of such a nature that an adjustment to the Conversion Ratio should equitably be made in respect of such transaction. If in such case the Board of Directors of the Corporation determines that the adjustment to the Conversion Ratio should be made, an adjustment shall be made effective as of such date, as determined by the Board of Directors of the Corporation. The determination of the Board of Directors of the Corporation as to whether an adjustment to the Conversion Ratio should be made pursuant to the foregoing provisions of this paragraph I(6), and, if so, as to what adjustment should be made and when, shall be final and binding on the Corporation and all shareholders of the Corporation. The Corporation shall be entitled to make such additional adjustments in the Conversion Ratio, in addition to those required by the foregoing provisions of this paragraph I, as shall be necessary in order that any dividend or

distribution in shares of capital stock of the Corporation, subdivision, reclassification or combination of shares of stock of the Corporation or any recapitalization of the Corporation shall not be taxable to holders of the Common Stock.

(7) For purposes of this paragraph I, the following definitions shall apply:

“Conversion Value” shall mean the Fair Market Value of the aggregate number of shares of Common Stock into which a share of ESOP Preferred Stock is convertible.

“Extraordinary Distribution” shall mean any dividend or other distribution (effected while any of the shares of ESOP Preferred Stock are outstanding) (a) of cash, where the aggregate amount of such cash dividend and distribution together with the amount of all cash dividends and distributions made during the preceding period of 12 months, when combined with the aggregate amount of all Pro Rata Repurchases (for this purpose, including only that portion of the aggregate purchase price of such Pro Rata Repurchase which is in excess of the Fair Market Value of the Common Stock repurchased as determined on the applicable expiration date (including all extension thereof) or any tender offer or exchange offer which is a Pro Rata Repurchase, or the date of purchase with respect to any other Pro Rata Repurchase which is not a tender offer or exchange offer made during such period), exceeds Twelve and One-Half percent (12.5%) of the aggregate Fair Market Value of all shares of Common Stock outstanding on the record date for determining the shareholders entitled to receive such Extraordinary Distribution and (b) any shares of capital stock of the Corporation (other than securities of the type referred to in paragraph I(2)), evidence of indebtedness of the Corporation or any other person or any other property (including shares of any subsidiary of the Corporation), or any combination thereof. The Fair Market Value of an Extraordinary Distribution for

purposes of paragraph I(4) shall be the sum of the Fair Market Value of such Extraordinary Distribution plus the amount of any cash dividends which are not Extraordinary Distributions made during such twelve-month period and not previously included in the calculation of an adjustment pursuant to paragraph I(4).

“Fair Market Value” shall mean, as to shares of Common Stock or any other class of capital stock or securities of the Corporation or any other issuer which are publicly traded, the average of the Current Market Prices (as hereinafter defined) of such shares or securities for each day of the Adjustment Period (as hereinafter defined). “Current Market Price” of publicly traded shares of Common Stock or any other class of capital stock or other security of the Corporation or any other issuer for a day shall mean the last reported sales price, regular way, or, in case no sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in either case as reported on the New York Stock Exchange Composite Tape or, if such security is not listed or admitted to trading on the New York Stock Exchange, on the principal national securities exchange on which such security is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on The Nasdaq National Market or, if such security is not quoted on Nasdaq, the average of the closing bid and asked prices on each such day in the over-the-counter market as reported by Nasdaq or, if bid and asked prices for such security on each such day shall not have been reported through Nasdaq, the average of the bid and asked prices for such day as furnished by any New York Stock Exchange member firm selected for such purpose by the Board of Directors of the Corporation or a committee thereof on each trading day during the Adjustment Period. “Adjustment Period” shall mean the period of five (5) consecutive trading days preceding the date as of which the Fair Market Value of a security is to be determined. The “Fair Market Value” of any security which is not publicly traded or of any other property shall mean the fair value thereof as determined by an independent investment banking or appraisal firm experienced in the valuation of such securities or property selected in good faith by the Board of Directors of the Corporation or a committee thereof, or, if no such investment banking or appraisal firm is in the good faith judgment of the Board of Directors or such committee available to make such determination, as determined in good faith by the Board of Directors of the Corporation or such committee.

“Non-Dilutive Amount” in respect of an issuance, sale or exchange by the Corporation of any right or warrant to purchase or acquire shares of Common Stock (including any security convertible into or exchangeable for shares of Common Stock) shall mean the remainder of (a) the product of the Fair Market Value of a share of Common Stock on the day preceding the first public announcement of such issuance, sale or exchange multiplied by the maximum number of shares of Common Stock which could be acquired on such date upon the exercise in full of such rights and warrants (including upon the conversion or exchange of all such convertible or exchangeable securities), whether or not exercisable (or convertible or exchangeable) at such date, minus (b) the aggregate amount payable pursuant to such right or warrant to purchase or acquire with maximum number of shares of

Common Stock; provided, however, that in no event shall the Non-Dilutive Amount be less than zero. For purposes of the foregoing sentence, in the case of a security convertible into or exchangeable for shares of Common Stock, the amount payable pursuant to a right or warrant to purchase or acquire shares of Common

Stock shall be the Fair Market Value of such security on the date of the issuance, sale or exchange of such security by the Corporation.

“Pro Rata Repurchase” shall mean any purchase of shares of Common Stock by the Corporation or any subsidiary thereof, whether for cash, shares of capital stock of the Corporation, other securities of the Corporation, evidences of indebtedness of the Corporation or any other person or any other property (including shares of a subsidiary of the Corporation), or any combination thereof, effected while any of the shares of ESOP Preferred Stock are outstanding, pursuant to any tender offer or exchange offer subject to Section 13(e) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or any successor provision of law, or pursuant to any other offer available to substantially all holders of Common Stock; provided, however, that no purchase of shares by the Corporation or any subsidiary thereof made in open market transactions shall be deemed a Pro Rata Repurchase. For purposes of this paragraph I(7), shares shall be deemed to have been purchased by the Corporation or any subsidiary thereof “in open market transactions” if they have been purchased substantially in accordance with the requirements or Rule 10b-18 as in effect under the Exchange Act, on the date shares of ESOP Preferred Stock are initially issued by the Corporation or on such other terms and conditions as the Board of Directors of the Corporation or a committee thereof shall have determined are reasonably designed to prevent such purchases from having a material effect on the trading market for the Common Stock.

“Valuation Date” with respect to an Extraordinary Distribution shall mean the date that is five (5) business days prior to the record date for such Extraordinary Distribution.

(8) Whenever an adjustment to the Conversion Ratio is required pursuant hereto, the Corporation shall forthwith place on file with the transfer agent for the Common Stock and the ESOP Preferred Stock if there be one, and with the Secretary of the Corporation, a statement signed by two officers of the Corporation, stating the adjusted Conversion Ratio determined as provided herein and the voting rights (as appropriately adjusted) of the ESOP Preferred Stock. Such statement shall set forth in reasonable detail such facts as shall be necessary to show the reason and the manner of computing such adjustment, including any determination of Fair Market Value involved in such computation. Promptly after each adjustment to the Conversion Ratio and the related voting rights of the ESOP Preferred Stock, the Corporation shall mail a notice thereof to each holder of shares of the ESOP Preferred Stock.

#### J. Ranking; Retirement of Shares.

(1) The ESOP Preferred Stock shall rank (a) senior to the Common Stock as to the payment of dividends and the distribution of assets on liquidation, dissolution and winding-up of the Corporation and (b) unless otherwise provided in the Articles of Incorporation of the Corporation or an amendment to such Articles of Incorporation relating to a subsequent series of Preferred Shares, junior to all other series of Preferred Shares as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding-up.

(2) Any shares of ESOP Preferred Stock acquired by the Corporation by reason of the conversion or redemption of such shares as provided hereby, or otherwise so acquired, shall be retired as shares of ESOP Preferred Stock and restored to the status of authorized but unissued shares of Preferred Shares, undesignated as to series, and may thereafter be reissued as part of a new series of such Preferred Shares as permitted by law.

#### K. Miscellaneous.

(1) All notices referred to herein shall be in writing, and all notices hereunder shall be deemed to have been given upon the earlier of receipt thereof or three (3) business days after the mailing thereof if sent by registered mail (unless first-class mail shall be specifically permitted for such notice under the terms hereof) with postage prepaid, addressed: (a) if to the Corporation, to its office at Bank of America Corporate Center, Charlotte, North Carolina 28255 (Attention: Treasurer) or to the transfer agent for the ESOP Preferred Stock, or other agent of the Corporation designated as permitted hereby or (b) if to any holder of the ESOP Preferred Stock or Common Stock, as the case may be, to such holder at the address of such holder as listed in the stock record books of the Corporation (which may include the records of any transfer agent for the ESOP Preferred Stock or Common Stock, as the case may be) or (c) to such other address as the Corporation or any such holder, as the case may be, shall have designated by notice similarly given.

(2) The term “Common Stock” as used herein means the Corporation’s Common Stock, as the same existed at the date of filing of the Amendment to the Corporation’s Articles of Incorporation relating to the ESOP Preferred Stock or any other class of stock resulting from successive changes or reclassification of such Common Stock consisting solely of changes in par value, or from par value to no par value. In the event that, at any time as a result of an adjustment made pursuant to paragraph I hereof, the holder of any share of the ESOP Preferred Stock upon thereafter surrendering such shares for conversion shall become entitled to receive any shares or other securities of the Corporation other than shares of Common Stock, the Conversion Ratio in respect of such other shares or securities so receivable upon conversion of shares of ESOP Preferred Stock shall thereafter be adjusted, and shall be subject to further adjustment from time to time, in a manner and on terms as nearly

equivalent as practicable to the provisions with respect to Common Stock contained in paragraph I hereof, and the provisions of paragraphs A through H, J, and K hereof with respect to the Common Stock shall apply on like or similar terms to any such other shares or securities.

(3) The Corporation shall pay any and all stock transfer and documentary stamp taxes that may be payable in respect of any issuance or delivery of shares of ESOP Preferred Stock or shares of Common Stock or other securities issued on account of ESOP Preferred Stock pursuant hereto or certificates representing such shares or securities. The Corporation shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issuance or delivery of shares of ESOP Preferred Stock or Common Stock or other securities in a name other than that in which the shares of ESOP Preferred Stock with respect to which such shares or other securities are issued or delivered were registered, or in respect of any payment to any person with respect to any such shares or securities other than a payment to the registered holder thereof, and shall not be required to make any such issuance, delivery or payment unless and until the person otherwise entitled to such issuance, delivery or payment has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid or is not payable.

(4) In the event that a holder of shares of ESOP Preferred Stock shall not by written notice designate the name in which shares of Common Stock to be issued upon conversion of such shares should be registered or to whom payment upon redemption of shares of ESOP Preferred Stock should be made or the address to which the certificate or certificates representing such shares, or such payment, should be sent, the Corporation shall be entitled to register such shares, and make such payment, in the name of the holder of such ESOP Preferred Stock as shown on the records of the Corporation and to send the certificate or certificates representing such shares, or such payment, to the address of such holder shown on the records of the Corporation.

(5) The Corporation may appoint, and from time to time discharge and change, a transfer agent for the ESOP Preferred Stock. Upon any such appointment or discharge of a transfer agent, the Corporation shall send notice thereof by first-class mail, postage prepaid, to each holder of record of ESOP Preferred Stock.

(c) \$2.50 Cumulative Convertible Preferred Stock, Series BB.

A. Designation.

The designation of this series is “\$2.50 Cumulative Convertible Preferred Stock, Series BB” (hereinafter referred to as the “Series BB Preferred Stock”), and the initial number of shares constituting such series shall be 19,993,432, which number may be increased or decreased (but not below the number of shares then outstanding) from time to time by the Board of Directors. The Series BB Preferred Stock shall rank prior to each of the Common Stock, the Series B Preferred Stock and the ESOP Preferred Stock with respect to the payment of dividends and the distribution of assets.

B. Dividend Rights.

(1) The holders of shares of Series BB Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, out of funds legally available therefor, cumulative preferential cash dividends, accruing from January 1, 1998, at an annual rate of \$2.50 per share, and no more, payable quarterly on the first day of January, April, July and October of each year (each of the quarterly periods ending on the last day of March, June, September and December being hereinafter referred to as a “dividend period”). Dividends on the Series BB Preferred Stock shall first become payable on the first day of January, April, July or October, as the case may be, next following the date of issuance; provided, however, that if the first dividend period ends within 20 days of the date of issuance, such initial dividend shall be payable at the completion of the first full dividend period.

(2) Dividends on shares of Series BB Preferred Stock shall be cumulative from January 1, 1998, whether or not there shall be funds legally available for the payment thereof. Accumulations of dividends on the Series BB Preferred Stock shall not bear interest. The Corporation shall not (i) declare or pay or set apart for payment any dividends or distributions on any stock ranking as to dividends junior to the Series BB Preferred Stock (other than dividends paid in shares of such junior stock) or (ii) make any purchase or redemption of, or any sinking fund payment for the purchase or redemption of, any stock ranking as to dividends junior to the Series BB Preferred Stock (other than a purchase or redemption made by issue or delivery of such junior stock) unless all dividends payable on all outstanding shares of Series BB Preferred Stock for all past dividend periods shall have been paid in full or declared and a sufficient sum set apart for payment thereof; provided, however, that any moneys theretofore deposited in any sinking fund with respect to any preferred stock of the Corporation in compliance with the provisions of such sinking fund may thereafter be applied to the purchase or redemption of such preferred stock in accordance with the terms of such sinking fund regardless of whether at the time of such application all dividends payable on all outstanding shares of Series BB Preferred Stock for all past dividend periods shall have been paid in full or declared and a sufficient sum set apart for payment thereof.

(3) All dividends declared on shares of Series BB Preferred Stock and any other class of preferred stock or series thereof ranking on a parity as to dividends with the Series BB Preferred Stock shall be declared pro rata, so that the amounts of

dividends declared on the Series BB Preferred Stock and such other preferred stock for the same dividend period, or for the dividend period of the Series BB Preferred Stock ending within the dividend period of such other stock, shall, in all cases, bear to each other the same ratio that accrued dividends on the shares of Series BB Preferred Stock and such other stock bear to each other.

#### C. Liquidation Preference.

(1) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the holders of Series BB Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to shareholders an amount equal to \$25 per share plus an amount equal to accrued and unpaid dividends thereon to and including the date of such distribution, and no more, before any distribution shall be made to the holders of any class of stock of the Corporation ranking junior to the Series BB Preferred Stock as to the distribution of assets.

(2) In the event the assets of the Corporation available for distribution to shareholders upon any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to the Series BB Preferred Stock and any other shares of preferred stock of the Corporation ranking on a parity with the Series BB Preferred Stock as to the distribution of assets, the holders of Series BB Preferred Stock and the holders of such other preferred stock shall share ratably in any distribution of assets of the Corporation in proportion to the full respective preferential amounts to which they are entitled.

(3) The merger or consolidation of the Corporation into or with any other corporation, the merger or consolidation of any other corporation into or with the Corporation or the sale of the assets of the Corporation substantially as an entirety shall not be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this paragraph C.

#### D. Redemption.

(1) The Corporation, at its option, may redeem all or any shares of the Series BB Preferred Stock at any time at a redemption price (the "Redemption Price") consisting of the sum of (i) \$25 per share and (ii) an amount equal to accrued and unpaid dividends thereon to and including the date of redemption.

(2) If less than all the outstanding shares of Series BB Preferred Stock are to be redeemed, the shares to be redeemed shall be selected pro rata as nearly as practicable or by lot, as the Board of Directors may determine.

(3) Notice of any redemption shall be given by first class mail, postage prepaid, mailed not less than 60 nor more than 90 days prior to the date fixed for redemption to the holders of record of the shares of Series BB Preferred Stock to be redeemed, at their respective addresses appearing on the books of the Corporation. Notice so mailed shall be conclusively presumed to have been duly given whether or not actually received. Such notice shall state: (1) the date fixed for redemption; (2) the Redemption Price; (3) the right of the holders of Series BB Preferred Stock to convert such stock into Common Stock until the close of business on the 15th day prior to the redemption date (or the next succeeding business day, if the 15th day is not a business day); (4) if no less than all the shares held by such holder are to be redeemed, the number of shares to be redeemed from such holder; and (5) the place(s) where certificates for such shares are to be surrendered for payment of the Redemption Price. If such notice is mailed as aforesaid, and if on or before the date fixed for redemption funds sufficient to redeem the shares called for redemption are set aside by the Corporation in trust for the account of the holders of the shares to be redeemed, notwithstanding the fact that any certificate for shares called for redemption shall not have been surrendered for cancellation, on and after the redemption date the shares represented thereby so called for redemption shall be deemed to be no longer outstanding, dividends thereon shall cease to accrue, and all rights of the holders of such shares as shareholders of the corporation shall cease, except the right to receive the Redemption Price, without interest, upon surrender of the certificate(s) representing such shares. Upon surrender in accordance with the aforesaid notice of the certificate(s) for any shares so redeemed (duly endorsed or accompanied by appropriate instruments of transfer, if so required by the Corporation in such notice), the holders of record of such shares shall be entitled to receive the Redemption Price, without interest.

(4) At the option of the Corporation, if notice of redemption is mailed as aforesaid, and if prior to the date fixed for redemption funds sufficient to pay in full the Redemption Price are deposited in trust, for the account of the holders of the shares to be redeemed, with a bank or trust company named in such notice doing business in the Borough of Manhattan, the City of New York, State of New York or the City of Charlotte, State of North Carolina and having capital, surplus and undivided profits of at least \$3 million, which bank or trust company also may be the Transfer Agent and/or Paying Agent for the Series BB Preferred Stock, notwithstanding the fact that any certificate for shares called for redemption shall not have been surrendered for cancellation, on and after such date of deposit the shares represented thereby so called for redemption shall be deemed to be no longer outstanding, and all rights of the holders of such shares as shareholders of the Corporation shall cease, except the right of the holders thereof to convert such shares in accordance with the provisions of paragraph F at any time prior to the close of business on the 15th day prior to the redemption date (or the next succeeding business day, if the 15th day is not a business day), and the right of the holders thereof to receive out of the funds so deposited in trust the Redemption Price, without interest, upon surrender of the certificate(s) representing such shares. Any funds so deposited with such bank or trust

company in respect of such shares of Series BB Preferred Stock converted before the close of business on the 15th day prior to the redemption date (or the next succeeding business day, if the 15th day is not a business day) shall be returned to the Corporation upon such conversion. Any funds so deposited with such a bank or trust company which shall remain unclaimed by the holders of shares called for redemption at the end of six years after the redemption date shall be repaid to the Corporation, on demand, and thereafter the holder of any such shares shall look only to the Corporation for the payment, without interest, of the Redemption Price.

(5) Any provisions of paragraph D or E to the contrary notwithstanding, in the event that any quarterly dividend payable on the Series BB Preferred Stock shall be in arrears and until all such dividends in arrears shall have been paid or declared and set apart for payment, the Corporation shall not redeem any shares of Series BB Preferred Stock unless all outstanding shares of Series BB Preferred Stock are simultaneously redeemed and shall not purchase or otherwise acquire any shares of Series BB Preferred Stock except in accordance with a purchase offer made by the Corporation on the same terms to all holders of record of Series BB Preferred Stock for the purchase of all outstanding shares thereof.

#### E. Purchase by the Corporation.

(1) Except as provided in paragraph D(5), the Corporation shall be obligated to purchase shares of Series BB Preferred Stock tendered by the holder thereof for purchase hereunder, at a purchase price consisting of the sum of (i) \$25 per share and (ii) an amount equal to accrued and unpaid dividends thereon to and including the date of purchase. In order to exercise his right to require the Corporation to purchase his shares of Series BB Preferred Stock, the holder thereof shall surrender the Certificate(s) therefor duly endorsed if the Corporation shall so require or accompanied by appropriate instruments of transfer satisfactory to the Corporation, at the office of the Transfer Agent(s) for the Series BB Preferred Stock, or at such other office as may be designated by the Corporation, together with written notice that such holder irrevocably elects to sell such shares to the Corporation. Shares of Series BB Preferred Stock shall be deemed to have been purchased by the Corporation immediately prior to the close of business on the date such shares are tendered for sale to the Corporation and notice of election to sell the same is received by the Corporation in accordance with the foregoing provisions. As of such date the shares so tendered for sale shall be deemed to be no longer outstanding, dividends thereon shall cease to accrue and all rights of the holder of such shares as a shareholder of the Corporation shall cease, except the right to receive the purchase price.

#### F. Conversion Rights.

The holders of shares of Series BB Preferred Stock shall have the right, at their option, to convert such shares into shares of Common Stock on the following terms and conditions:

(1) Shares of Series BB Preferred Stock shall be convertible at any time into fully paid and nonassessable shares of Common Stock (calculated as to each conversion to the nearest 1/1,000 of a share) at the initial rate of 6.17215 shares of Common Stock for each share of Series BB Preferred Stock surrendered for conversion (the "Conversion Rate"). The Conversion Rate shall be subject to adjustment from time to time as hereinafter provided. No payment or adjustment shall be made on account of any accrued and unpaid dividends on shares of Series BB Preferred Stock surrendered for conversion prior to the record date for the determination of shareholders entitled to such dividends or on account of any dividends on the Common Stock issued upon such conversion subsequent to the record date for the determination of shareholders entitled to such dividends. If any shares of Series BB Preferred Stock shall be called for redemption, the right to convert the shares designated for redemption shall terminate at the close of business on the 15th day prior to the redemption date (or the next succeeding business day, if the 15th day is not a business day) unless default be made in the payment of the Redemption Price. In the event of default in the payment of the Redemption Price, the right to convert the shares designated for redemption shall terminate at the close of business on the business day immediately preceding the date that such default is cured.

(2) In order to convert shares of Series BB Preferred Stock into Common Stock, the holder thereof shall surrender the certificate(s) therefor, duly endorsed if the Corporation shall so require, or accompanied by appropriate instruments of transfer satisfactory to the Corporation, at the office of the Transfer Agent(s) for the Series BB Preferred Stock, or at such other office as may be designated by the Corporation, together with written notice that such holder irrevocably elects to convert such shares. Such notice shall also state the name(s) and address(es) in which such holder wishes the certificate(s) for the shares of Common Stock issuable upon conversion to be issued. As soon as practicable after receipt of the certificate(s) representing the shares of Series BB Preferred Stock to be converted and the notice of election to convert the same, the Corporation shall issue and deliver at said office a certificate or certificates for the number of whole shares of Common Stock issuable upon conversion of the shares of Series BB Preferred Stock surrendered for conversion, together with a cash payment in lieu of any fraction of a share, as hereinafter provided, to the person(s) entitled to receive the same. Shares of Series BB Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the date such shares are surrendered for conversion and notice of election to convert the same is received by the Corporation in accordance with the foregoing provisions, and the person(s) entitled to receive the Common Stock issuable upon such conversion shall be deemed for all purposes as record holder(s) of such Common Stock as of such date.

(3) No fractional shares of Common Stock shall be issued upon conversion of any shares of Series BB Preferred Stock. If more than one share of Series BB Preferred Stock is surrendered at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares so surrendered. If the conversion of any shares of Series BB Preferred Stock results in a fractional share of Common Stock, the Corporation shall pay cash in lieu thereof in an amount equal to such fraction multiplied times the closing price of the Common Stock on the date on which the shares of Series BB Preferred Stock were duly surrendered for conversion, or if such date is not a trading date, on the next succeeding trading date. The closing price of the Common Stock for any day shall mean the last reported sales price regular way on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, on the New York Stock Exchange, or, if the Common Stock is not then listed on such Exchange, on the principal national securities exchange on which the Common Stock is listed for trading, or, if not then listed for trading on any national securities exchange, the average of the closing bid and asked prices of the Common Stock as furnished by the National Quotation Bureau, Inc., or if the National Quotation Bureau, Inc. ceases to furnish such information, by a comparable independent securities quotation service.

(4) In the event the Corporation shall at any time (i) pay a dividend or make a distribution to holders of Common Stock in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a larger number of shares, or (iii) combine its outstanding shares of Common Stock into a smaller number of shares, the Conversion Rate in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision or combination shall be adjusted so that the holder of any shares of Series BB Preferred Stock surrendered for conversion after such record date or effective date shall be entitled to receive the number of shares of Common Stock which he would have owned or have been entitled to receive immediately following such record date or effective date had such shares of Series BB Preferred Stock been converted immediately prior thereto.

(5) Whenever the Conversion Rate shall be adjusted as herein provided (i) the Corporation shall forthwith keep available at the office of the Transfer Agent(s) for the Series BB Preferred Stock a statement describing in reasonable detail the adjustment, the facts requiring such adjustment and the method of calculation used; and (ii) the Corporation shall cause to be mailed by first class mail, postage prepaid, as soon as practicable to each holder of record of shares of Series BB Preferred Stock a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate.

(6) In the event of any consolidation of the Corporation with or merger of the Corporation into any other corporation (other than a merger in which the Corporation is the surviving corporation) or a sale of the assets of the Corporation substantially as an entirety, the holder of each share of Series BB Preferred Stock shall have the right, after such consolidation, merger or sale to convert such share into the number and kind of shares of stock or other securities and the amount and kind of property receivable upon such consolidation, merger or sale by a holder of the number of shares of Common Stock issuable upon conversion of such share of Series BB Preferred Stock immediately prior to such consolidation, merger or sale. Provision shall be made for adjustments in the Conversion Rate which shall be as nearly equivalent as may be practicable to the adjustments provided for in paragraph F(4). The provisions of this paragraph F(6) shall similarly apply to successive consolidations, mergers and sales.

(7) The Corporation shall pay any taxes that may be payable in respect of the issuance of shares of Common Stock upon conversion of shares of Series BB Preferred Stock, but the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance of shares of Common Stock in a name other than that in which the shares of Series BB Preferred Stock so converted are registered, and the Corporation shall not be required to issue or deliver any such shares unless and until the person(s) requesting such issuance shall have paid to the Corporation the amount of any such taxes or shall have established to the satisfaction of the Corporation that such taxes have been paid.

(8) The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock the full number of shares of Common Stock issuable upon the conversion of all shares of Series BB Preferred Stock then outstanding.

(9) In the event that:

- (i) The Corporation shall declare a dividend or any other distribution on its Common Stock, payable otherwise than in cash out of retained earnings; or
- (ii) The Corporation shall authorize the granting to the holders of its Common Stock of rights to subscribe for or purchase any shares of capital stock of any class or of any other rights; or
- (iii) The Corporation shall propose to effect any consolidation of the Corporation with or merger of the Corporation with or into any other corporation or a sale of the assets of the company substantially as an entirety which would result in an adjustment under paragraph F(6),



the Corporation shall cause to be mailed to the holders of record of Series BB Preferred Stock at least 20 days prior to the applicable date hereinafter specified a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined or (y) the date on which such consolidation, merger or sale is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such consolidation, merger or sale. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, consolidation, merger or sale.

G. Voting Rights.

Holders of Series BB Preferred Stock shall have no voting rights except as required by law and as follows: in the event that any quarterly dividend payable on the Series BB Preferred Stock is in arrears, the holders of Series BB Preferred Stock shall be entitled to vote together with the holders of Common Stock at the Corporation's next meeting of shareholders and at each subsequent meeting of shareholders unless all dividends in arrears have been paid or declared and set apart for payment prior to the date of such meeting. For the purpose of this paragraph G, each holder of Series BB Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which his Series BB Preferred Stock is then convertible.

H. Reacquired Shares.

Shares of Series BB Preferred Stock converted, redeemed, or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

I. No Sinking Fund.

Shares of Series BB Preferred Stock are not subject to the operation of a sinking fund.

(d) Pursuant to the authority conferred by this Article 3, the following series of Preferred Shares have been designated, each such series consisting of such number of shares, with such voting powers and with such designations, preferences and relative,

participating, optional or other special rights, and qualifications, limitations or restrictions thereof as are stated and expressed in the exhibit with respect to such series attached hereto as specified below and incorporated herein by reference:

<u>Exhibit A</u>	Floating Rate Non-Cumulative Preferred Stock, Series E
<u>Exhibit B</u>	Floating Rate Non-Cumulative Preferred Stock, Series F
<u>Exhibit C</u>	Adjustable Rate Non-Cumulative Preferred Stock, Series G
<u>Exhibit D</u>	7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L
<u>Exhibit E</u>	Floating Rate Non-Cumulative Preferred Stock, Series 1
<u>Exhibit F</u>	Floating Rate Non-Cumulative Preferred Stock, Series 2
<u>Exhibit G</u>	Floating Rate Non-Cumulative Preferred Stock, Series 4
<u>Exhibit H</u>	Floating Rate Non-Cumulative Preferred Stock, Series 5
<u>Exhibit I</u>	Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U
<u>Exhibit J</u>	6% Non-Cumulative Perpetual Preferred Stock, Series T
<u>Exhibit K</u>	Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X
<u>Exhibit L</u>	Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z
<u>Exhibit M</u>	6.500% Non-Cumulative Preferred Stock, Series Y
<u>Exhibit N</u>	Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA
<u>Exhibit O</u>	6.200% Non-Cumulative Preferred Stock, Series CC
<u>Exhibit P</u>	Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD
<u>Exhibit Q</u>	6.000% Non-Cumulative Preferred Stock, Series EE
<u>Exhibit R</u>	Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series FF
<u>Exhibit S</u>	6.000% Non-Cumulative Preferred Stock, Series GG
<u>Exhibit T</u>	5.875% Non-Cumulative Preferred Stock, Series HH
<u>Exhibit U</u>	Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series JJ
<u>Exhibit V</u>	5.375% Non-Cumulative Preferred Stock, Series KK
<u>Exhibit W</u>	5.000% Non-Cumulative Preferred Stock, Series LL

4. The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

5. No holder of any stock of the Corporation of any class now or hereafter authorized shall have any preemptive right to purchase, subscribe for, or otherwise acquire any shares of shares of stock of the Corporation of any class now or hereafter authorized, or any securities exchangeable for or convertible into any such shares, or any warrants or other instruments evidencing rights or options to subscribe for, purchase or otherwise acquire any such shares whether such shares, securities, warrants or other instruments be unissued, or issued and thereafter acquired by the Corporation.

6. To the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation, its shareholders or otherwise for monetary damage for breach of his duty as a director. Any repeal or modification of this Article shall be

prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

7. In furtherance and not in limitation of the powers conferred by law, the Board of Directors of the Corporation is expressly authorized and empowered to make, alter and repeal the Bylaws of the Corporation by a majority vote at any regular or special meeting of the Board of Directors or by written consent, subject to the power of the stockholders of the Corporation to alter or repeal any Bylaws made by the Board of Directors.

8. The Corporation reserves the right at any time from time to time to amend or repeal any provision contained in this Certificate of Incorporation, and to add any other provisions authorized by the laws of the State of Delaware at the time in force; and all rights, preferences and privileges conferred upon stockholders, directors or any other persons by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article.

9. Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

10. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation or may be effected by consent in writing in lieu of a meeting of such stockholders only if consents are signed by all stockholders of the Corporation entitled to vote on such action.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Bank of America Corporation has caused this Restated Certificate of Incorporation to be signed by its duly authorized officer this 27th day of December, 2019.

**BANK OF AMERICA CORPORATION**

By: /s/ Ross E. Jeffries, Jr.

Name: \_\_\_\_\_  
Ross E. Jeffries, Jr.

Title: Deputy General Counsel and Corporate Secretary

**Exhibit A**

**Floating Rate Non-Cumulative Preferred Stock, Series E**

**CERTIFICATE OF DESIGNATIONS  
OF  
FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES E  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At a meeting duly convened and held on July 26, 2006, the Board of Directors of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on October 30, 2006, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series E, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in Exhibit A hereto, which is incorporated herein by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 3rd day of November, 2006.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

By:

Name: Teresa M. Brenner

Title: Associate General Counsel

**EXHIBIT A**  
**TO**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES E**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “Floating Rate Non-Cumulative Preferred Stock, Series E” (the “*Series E Preferred Stock*”). Each share of Series E Preferred Stock shall be identical in all respects to every other share of Series E Preferred Stock. Series E Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series E Preferred Stock shall be 85,100. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series E Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series E Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series E Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Calculation Agent*” shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series E Preferred Stock.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series E Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D and (c) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series E Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series E Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“Series E Preferred Stock” shall have the meaning set forth in Section 1 hereof.

“Telerate Page 3750” means the display page so designated on the Moneyline/Telerate Service (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“Three-Month LIBOR” means, with respect to any Dividend Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “Dividend Determination Date”). If such rate does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 A.M., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had Series E Preferred Stock been outstanding. The calculation agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series E Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series E Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$25,000 per share of Series E Preferred Stock, and no more, payable quarterly in arrears on each February 15, May 15, August 15 and November 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “Dividend Payment Date”). The period from and including the date of issuance of the Series E Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “Dividend Period.” Dividends on each share of Series E Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate per annum equal to the greater of (i) Three-Month LIBOR plus a spread of 0.35% and (ii) 4.00%. The record date for payment of dividends on the Series E Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series E Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series E Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Series E Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series E Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series E Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or

into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series E Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series E Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series E Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series E Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series E Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series E Preferred Stock and the holders of any Parity Stock. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series E Preferred Stock and the aggregate of the current and accrued dividends due on the Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series E Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series E Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series E Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series E Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series E Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series E Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series E Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series E Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series E Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series E Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after the Dividend Payment Date on November 15, 2011, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series E Preferred Stock shall be \$25,000 per share plus dividends that have been declared but not paid.



**(b) Notice of Redemption.** Notice of every redemption of shares of Series E Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series E Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series E Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series E Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series E Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series E Preferred Stock at the time outstanding, the shares of Series E Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series E Preferred Stock in proportion to the number of Series E Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series E Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

## **Section 7. Voting Rights.**

**(a) General.** The holders of Series E Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by Delaware law.

### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series E Preferred Stock or any other class or series of preferred stock that ranks on parity with Series E Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b) have been conferred and are exercisable, have not been paid in an aggregate amount equal, as to any class or series, to at least six quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors of the Corporation shall be increased by two, and the holders of the Series E Preferred Stock (together with holders of any class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation’s securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors of the Corporation shall at no time include more than two such directors. Each such

director elected by the holders of shares of Series E Preferred Stock and any other class or series of preferred stock that ranks on parity with the Series E Preferred Stock as to payment of dividends is a “*Preferred Director*.”

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series E Preferred Stock and any other class or series of our stock that ranks on parity with Series E Preferred Stock as to payment of dividends and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series E Preferred Stock (addressed to the secretary at the Corporation’s principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series E Preferred Stock and any other class or series of preferred stock that ranks on parity with Series E Preferred Stock as to payment of dividends and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation’s by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series E Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series E Preferred Stock (together with holders of any other class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series E Preferred Stock and any other class or series of preferred stock that ranks on parity with Series E Preferred Stock as to payment of dividends, if any, for at least four quarterly Dividend Periods, then the right of the holders of Series E Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate and the number of directors constituting the board of directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series E Preferred Stock (together with holders of any other class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**Section 8. Preemption and Conversion.** The holders of Series E Preferred Stock shall not have any rights of preemption or rights to convert such Series E Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series E Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series E Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series E Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series E Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series E Preferred Stock are not subject to the operation of a sinking fund.

**Exhibit B**

**Floating Rate Non-Cumulative Preferred Stock, Series F**

**CERTIFICATE OF DESIGNATIONS  
OF  
FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES F  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*Corporation*"), does hereby certify that:

1. At a meeting duly convened and held on April 26, 2006, the Board of Directors of the Corporation (the "*Board*") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Committee (the "*Committee*") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on February 12, 2007, the Committee duly adopted the following resolution by written consent: **RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series F, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in Exhibit A hereto, which is incorporated herein by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 15th day of February, 2007.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

By:

Name: Teresa M. Brenner

Title: Associate General Counsel

**EXHIBIT A**  
**TO**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES F**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “Floating Rate Non-Cumulative Preferred Stock, Series F” (the “*Series F Preferred Stock*”). Each share of Series F Preferred Stock shall be identical in all respects to every other share of Series F Preferred Stock. Series F Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series F Preferred Stock shall be 7,001. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series F Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series F Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series F Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Calculation Agent*” shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series F Preferred Stock.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series F Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G and (e) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series F Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series F Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series F Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Telerate Page 3750*” means the display page so designated on the Moneyline/Telerate Service (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“*Three-Month LIBOR*” means, with respect to any Dividend Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had Series F Preferred Stock been outstanding. The Calculation Agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series F Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series F Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$100,000 per share of Series F Preferred Stock, and no more, payable quarterly in arrears on each March 15, June 15, September 15 and December 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from and including the date of issuance of the Series F Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series F Preferred Stock will accrue on the liquidation preference of \$100,000 per share for each Dividend Period (1) from the date of issuance to, but excluding, the Dividend Payment Date in March 2012 (if issued prior to that date) at a rate per annum equal to Three-Month LIBOR plus a spread of 0.40% and (2) thereafter at a rate per annum equal to the greater of (i) Three-Month LIBOR plus a spread of 0.40% and (ii) 4.00%. The record date for payment of dividends on the Series F Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series F Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series F Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Series F Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series F Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series F Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series F Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series F Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series F Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series F Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series F Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series F Preferred Stock and the holders of any Parity Stock. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series F Preferred Stock and the aggregate of the current and accrued dividends due on the Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series F Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series F Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series F Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series F Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$100,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series F Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series F Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series F Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series F Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series F Preferred Stock and all holders of any Parity Stock, then the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

## Section 6. Redemption.

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series F Preferred Stock at the time outstanding, at any time on or after the later of March 15, 2012 and the date of original issuance of the Series F Preferred Stock, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series F Preferred Stock shall be \$100,000 per share plus dividends that have been declared but not paid plus accrued and unpaid dividends for the then-current Dividend Period to the redemption date.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series F Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 15 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series F Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series F Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series F Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series F Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series F Preferred Stock at the time outstanding, the shares of Series F Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series F Preferred Stock in proportion to the number of Series F Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series F Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.** The holders of the Series F Preferred Stock will have no voting rights and will not be entitled to elect any directors, except as expressly provided by law.

**Section 8. Preemption and Conversion.** The holders of Series F Preferred Stock shall not have any rights of preemption or rights to convert such Series F Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series F Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series F

Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series F Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series F Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series F Preferred Stock are not subject to the operation of a sinking fund.



**Exhibit C**

**Adjustable Rate Non-Cumulative Preferred Stock, Series G**

**CERTIFICATE OF DESIGNATIONS  
OF  
ADJUSTABLE RATE NON-CUMULATIVE PREFERRED STOCK, SERIES G  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*Corporation*"), does hereby certify that:

1. At a meeting duly convened and held on April 26, 2006, the Board of Directors of the Corporation (the "*Board*") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Committee (the "*Committee*") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on February 12, 2007, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Adjustable Rate Non-Cumulative Preferred Stock, Series G, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in Exhibit A hereto, which is incorporated herein by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 15th day of February, 2007.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

By:

Name: Teresa M. Brenner

Title: Associate General Counsel

**EXHIBIT A**  
**TO**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**ADJUSTABLE RATE NON-CUMULATIVE PREFERRED STOCK, SERIES G**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “Adjustable Rate Non-Cumulative Preferred Stock, Series G” (the “*Series G Preferred Stock*”). Each share of Series G Preferred Stock shall be identical in all respects to every other share of Series G Preferred Stock. Series G Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series G Preferred Stock shall be 8,501. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series G Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series G Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series G Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Calculation Agent*” shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series G Preferred Stock.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series G Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F and (e) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series G Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series G Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series G Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Telerate Page 3750*” means the display page so designated on the Moneyline/Telerate Service (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“*Three-Month LIBOR*” means, with respect to any Dividend Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had Series G Preferred Stock been outstanding. The Calculation Agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series G Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series G Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$100,000 per share of Series G Preferred Stock, and no more, payable as follows: (i) if the Series G Preferred Stock is issued prior to March 15, 2012, semi-annually in arrears on each March 15 and September 15 through March 15, 2012; and (ii) from and including the later of March 15, 2012 and the date of issuance, quarterly in arrears on each March 15, June 15, September 15 and December 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from and including the date of issuance of the Series G Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series G Preferred Stock will accrue on the liquidation preference of \$100,000 per share for each Dividend Period (1) from the date of issuance to, but excluding, the Dividend Payment Date in March 2012 (if issued prior to that date) at a rate per annum equal to 5.63% and (2) thereafter at a rate per annum equal to the greater of (x) Three-Month LIBOR plus a spread of 0.40% and (y) 4.00%. The record date for payment of dividends on the Series G Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series G Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series G Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Series G Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect

to Series G Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series G Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series G Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series G Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series G Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series G Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series G Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series G Preferred Stock and the holders of any Parity Stock. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series G Preferred Stock and the aggregate of the current and accrued dividends due on the Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series G Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series G Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series G Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series G Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$100,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series G Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series G Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series G Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series G Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series G Preferred Stock and all holders of any Parity Stock, then the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

## **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series G Preferred Stock at the time outstanding, at any time on or after the later of March 15, 2012 and the date of original issuance of the Series G Preferred Stock, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series G Preferred Stock shall be \$100,000 per share plus dividends that have been declared but not paid plus accrued and unpaid dividends for the then-current Dividend Period to the redemption date.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series G Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 15 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series G Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series G Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series G Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series G Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series G Preferred Stock at the time outstanding, the shares of Series G Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series G Preferred Stock in proportion to the number of Series G Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series G Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.** The holders of the Series G Preferred Stock will have no voting rights and will not be entitled to elect any directors, except as expressly provided by law.

**Section 8. Preemption and Conversion.** The holders of Series G Preferred Stock shall not have any rights of preemption or rights to convert such Series G Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series G Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series G

Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series G Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series G Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series G Preferred Stock are not subject to the operation of a sinking fund.

**Exhibit D**

**7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L**

**CERTIFICATE OF DESIGNATIONS  
OF  
7.25% NON-CUMULATIVE PERPETUAL  
CONVERTIBLE PREFERRED STOCK, SERIES L  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At meetings duly convened and held on December 11, 2007 and January 23, 2008, the Board of Directors of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Special Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on January 28, 2008, the Committee duly adopted the following resolution by written consent:

"**RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in the Certificate of Designations attached hereto as Exhibit A, which is incorporated herein and made a part of these resolutions by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 28th day of January, 2008.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

By:

Name: Teresa M. Brenner

Title: Associate General Counsel

## EXHIBIT A

### CERTIFICATE OF DESIGNATIONS OF 7.25% NON-CUMULATIVE PERPETUAL CONVERTIBLE PREFERRED STOCK, SERIES L OF BANK OF AMERICA CORPORATION

**Section 1. Designation.** The designation of the series of preferred stock shall be “7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L”, \$0.01 par value, with a liquidation preference of \$1,000 per share (the “*Series L Preferred Stock*”). Each share of Series L Preferred Stock shall be identical in all respects to every other share of Series L Preferred Stock. Series L Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series L Preferred Stock shall be 6,900,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series L Preferred Stock then outstanding) by further resolution duly adopted by the Board, the Committee or any other duly authorized committee of the Board and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series L Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series L Preferred Stock:

“*Applicable Conversion Price*” at any given time means, for each share of Series L Preferred Stock, the price equal to \$1,000 divided by the Applicable Conversion Rate in effect at such time.

“*Applicable Conversion Rate*” means the Conversion Rate in effect at any given time.

“*Base Price*” has the meaning set forth in Section 6(d)(i).

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or required by law or regulation to close in New York, New York or in Charlotte, North Carolina.

“*Closing Price*” of the Common Stock on any determination date means the closing sale price or, if no closing sale price is reported, the last reported sale price of the shares of the Common Stock on the New York Stock Exchange on such date. If the Common Stock is not traded on the New York Stock Exchange on any determination date, the Closing Price of the Common Stock on such determination date means the closing sale price as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is so listed or quoted, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national or regional securities exchange on which the Common Stock is so listed or quoted, or if the Common Stock is not so listed or quoted on a U.S. national or regional securities exchange, the last quoted bid price for the Common Stock in the over-the-counter market as reported by Pink Sheets LLC or a similar organization, or, if that bid price is not available, the market price of the Common Stock on that date as determined by a nationally recognized independent investment banking firm retained by the Corporation for this purpose.

For purposes of this Certificate of Designations, all references herein to the “Closing Price” and “last reported sale price” of the Common Stock on the New York Stock Exchange shall be such closing sale price and last reported sale price as reflected on the website of the New York Stock Exchange (<http://www.nyse.com>) and as reported by Bloomberg Professional Service; *provided* that in the event that there is a discrepancy between the closing sale price or last reported sale price as reflected on the website of the New York Stock Exchange and as reported by Bloomberg Professional Service, the closing sale price and last reported sale price on the website of the New York Stock Exchange will govern.

“*Common Stock*” means the common stock, \$0.01 par value, of the Corporation.

“*Conversion Agent*” shall mean Computershare Trust Company, N.A. and Computershare Inc. collectively acting in their capacity as conversion agent for the Series L Preferred Stock, and their respective successors and assigns.

“*Conversion Date*” has the meaning set forth in Section 6(a)(v)(B).



“*Conversion Rate*” means for each share of Series L Preferred Stock, 20 shares of Common Stock, plus cash in lieu of fractional shares, subject to adjustment as set forth herein.

“*Current Market Price*” of the Common Stock on any day, means the average of the VWAP of the Common Stock over each of the ten consecutive Trading Days ending on the earlier of the day in question and the day before the Ex-Date or other specified date with respect to the issuance or distribution requiring such computation, appropriately adjusted to take into account the occurrence during such period of any event described in Section 7(a)(i) through (vi).

“*Depository*” means DTC or its nominee or any successor depository appointed by the Corporation.

“*Dividend Payment Date*” has the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” has the meaning set forth in Section 4(a) hereof.

“*Dividend Threshold Amount*” has the meaning set forth in Section 7(a)(v).

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Exchange Property*” has the meaning set forth in Section 8(a).

“*Ex-Date*,” when used with respect to any issuance or distribution, means the first date on which the Common Stock or other securities trade without the right to receive the issuance or distribution.

“*Fundamental Change*” has the meaning set forth in Section 6(d)(i).

“*Holder*” means the Person in whose name the shares of Series L Preferred Stock are registered, which may be treated by the Corporation, Transfer Agent, Registrar, paying agent and Conversion Agent as the absolute owner of the shares of Series L Preferred Stock for the purpose of making payment and settling conversions and for all other purposes.

“*Junior Stock*” means the Common Stock and any other class or series of capital stock of the Corporation over which Series L Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Make-Whole Acquisition*” means the occurrence, prior to any Conversion Date, of one of the following:

(a) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act files a Schedule TO or any schedule, form, or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of common equity of the Corporation representing more than 50% of the voting power of the Common Stock; or

(b) consummation of the Corporation’s consolidation or merger or similar transaction or any sale, lease, or other transfer in one transaction or a series of related transactions of all or substantially all of the Corporation’s and the Corporation’s subsidiaries’ consolidated assets, taken as a whole, to any Person other than one of the Corporation’s subsidiaries, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property, other than pursuant to a transaction in which the persons that “beneficially owned” (as defined in Rule 13d-3 under the Exchange Act) directly or indirectly, voting shares immediately prior to such transaction beneficially own, directly or indirectly, voting shares representing a majority of the total voting power of all outstanding classes of voting shares of the continuing or surviving person immediately after the transaction; *provided, however* that a Make-Whole Acquisition will not be deemed to have occurred if at least 90% of the consideration received by holders of the Common Stock in the transaction or transactions consists of shares of common stock or American Depositary Receipts in respect of common stock that are traded on a U.S. national securities exchange or securities exchange in the European Economic Area or that will be so traded when issued or exchanged in connection with a Make-Whole Acquisition.

“*Make-Whole Acquisition Conversion*” has the meaning set forth in Section 6(c)(i).

“*Make-Whole Acquisition Conversion Period*” has the meaning set forth in Section 6(c)(i).

“*Make-Whole Acquisition Effective Date*” has the meaning set forth in Section 6(c)(i).

“*Make-Whole Acquisition Stock Price*” means the price paid per share of Common Stock in the event of a Make-Whole Acquisition. If the holders of shares of Common Stock receive only cash in the Make-Whole Acquisition, the Make-Whole Acquisition Stock Price will be the cash amount paid per share of Common Stock. Otherwise, the Make-Whole Acquisition Stock Price shall be the average of the Closing Price per share of Common Stock on the ten Trading Days up to, but not including, the Make-Whole Acquisition Effective Date.

“*Make-Whole Shares*” has the meaning set forth in Section 6(c)(i).

“*Nonpayment*” has the meaning set forth in Section 11(b)(i).

“*Notice of Optional Conversion*” has the meaning set forth in Section 6(b)(iii).

“*Optional Conversion Date*” has the meaning set forth in Section 6(b)(iii).

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding), (e) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding), (f) the Corporation’s 6.625% Non-Cumulative Preferred Stock, Series I, (g) the Corporation’s 7.25% Non-Cumulative Preferred Stock, Series J, (h) the Corporation’s Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K (if and when issued and outstanding) and (i) any other class or series of capital stock of the Corporation hereafter authorized that ranks on par with the Series L Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Person*” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company or trust.

“*Preferred Director*” has the meaning set forth in Section 11(b)(i).

“*Purchased Shares*” has the meaning set forth in Section 7(a)(vi).

“*Reference Price*” means the price paid per share of Common Stock in the event of a Fundamental Change. If the holders of shares of Common Stock receive only cash in the Fundamental Change, the Reference Price shall be the cash amount paid per share. Otherwise, the Reference Price will be the average of the Closing Price per share of Common Stock on the ten Trading Days up to, but not including, the effective date of the Fundamental Change.

“*Reorganization Event*” has the meaning set forth in Section 8.

“*Registrar*” means Computershare Trust Company, N.A. or its nominee or any successor or registrar appointed by the Corporation.

“*Senior Stock*” means any class or series of capital stock of the Corporation authorized which has preference or priority over the Series L Preferred Stock as to the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Series L Preferred Stock*” has the meaning set forth in Section 1.

“*spin-off*” has the meaning set forth in Section 7(a)(iv).

“*Trading Day*” for purposes of determining the VWAP or Closing Price means a day on which the shares of Common Stock:

- (a) are not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the close of business; and
- (b) have traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the Common Stock.

“*Transfer Agent*” means Computershare Trust Company, N.A. acting as Transfer Agent, Registrar, and Conversion Agent for the Series L Preferred Stock, and its successors and assigns.

“*Voting Parity Securities*” has the meaning set forth in Section 11(b)(i).

“*VWAP*” means, per share of the Common Stock on any Trading Day, the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “BAC UN <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the open of trading on the relevant Trading Day until the close of trading on the relevant Trading Day (or if such volume-weighted average price is unavailable, the market price of one share of the Common Stock on such trading days determined, using a volume-weighted average method, by a nationally recognized investment banking firm (unaffiliated with the Corporation) retained for this purpose by the Corporation).

#### Section 4. Dividends.

**(a) Rate.** Holders of Series L Preferred Stock shall be entitled to receive, when, as and if declared by the Board or any duly authorized committee of the Board, but only out of assets legally available under Delaware law for payment, non-cumulative cash dividends on the liquidation preference of \$1,000 per share of Series L Preferred Stock, and no more, payable quarterly in arrears on each January 30, April 30, July 30 and October 30 of each year, beginning on April 30, 2008; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from and including the date of issuance of the Series L Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “*Dividend Period*”. Dividends on each share of Series L Preferred Stock will accrue on the liquidation preference of \$1,000 per share at a rate per annum equal to 7.25%. The record date for payment of dividends on the Series L Preferred Stock shall be the first day of the calendar month in which the relevant Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation will be rounded to the nearest cent, with one-half cent being rounded upward. Dividends on the Series L Preferred Stock will cease to accrue after conversion, as described below. If the Corporation issues additional shares of the Series L Preferred Stock, dividends on those additional shares will accrue from the preceding scheduled Dividend Payment Date at the dividend rate.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series L Preferred Stock shall be non-cumulative. Accordingly, if for any reason the Board or a duly authorized committee of the Board does not declare a dividend on the Series L Preferred Stock for a Dividend Period prior to the related Dividend Payment Date, that dividend will not accrue, and the Corporation will have no obligation to pay a dividend for that Dividend Period on the Dividend Payment Date or at any time in the future, whether or not the Board or a duly authorized committee of the Board declares a dividend on the Series L Preferred Stock or any other series of the Corporation’s preferred stock or Common Stock for any future Dividend Period.

**(c) Dividend Stopper.** So long as any share of Series L Preferred Stock remains outstanding, (i) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared and made or set aside for payment on any Junior Stock (other than a dividend payable solely in shares of Junior Stock), (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock will be repurchased, redeemed, or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series L Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, during a Dividend Period, unless, in each case, the full dividends for the then-current Dividend Period on all outstanding shares of Series L Preferred Stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation’s Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreements) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series L Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series L Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series L Preferred Stock and on any Parity Stock but does not make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series L Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series L Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. The Corporation is not obligated to and will not pay Holders of the Series L

Preferred Stock any interest or sum of money in lieu of interest on any dividend not paid on a Dividend Payment Date. The Corporation is not obligated to and will not pay Holders of the Series L Preferred Stock any dividend in excess of the dividends on the Series L Preferred Stock that are payable as described herein. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board or any duly authorized committee of the Board may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series L Preferred Stock shall not be entitled to participate in any such dividend

**Section 5. Right to Convert.** Each Holder shall have the right, at such Holder's option, at any time, to convert all or any portion of such Holder's Series L Preferred Stock into shares of Common Stock at the Applicable Conversion Rate (subject to the conversion procedures set forth in Section 6 herein) plus cash in lieu of fractional shares.

**Section 6. Conversion.**

**(a) Conversion Procedures.**

(i) Effective immediately prior to the close of business on the Optional Conversion Date or any applicable Conversion Date, dividends shall no longer be declared on any converted shares of Series L Preferred Stock and such shares of Series L Preferred Stock shall cease to be outstanding, in each case, subject to the right of Holders to receive any declared and unpaid dividends on such shares and any other payments to which they are otherwise entitled pursuant to Section 5, Section 6 (b), Section 6(c), Section 6(d), Section 8 or Section 12 hereof, as applicable.

(ii) Prior to the close of business on the Optional Conversion Date or any applicable Conversion Date, shares of Common Stock issuable upon conversion of, or other securities issuable upon conversion of, any shares of Series L Preferred Stock shall not be deemed outstanding for any purpose, and Holders shall have no rights with respect to the Common Stock or other securities issuable upon conversion (including voting rights, rights to respond to tender offers for the Common Stock and rights to receive any dividends or other distributions on the Common Stock or other securities issuable upon conversion) by virtue of holding shares of Series L Preferred Stock.

(iii) Shares of Series L Preferred Stock duly converted in accordance with the terms hereof, or otherwise reacquired by the Corporation, will resume the status of authorized and unissued preferred stock, undesignated as to series and available for future issuance. The Corporation may from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series L Preferred Stock.

(iv) The Person or Persons entitled to receive the Common Stock and/or securities issuable upon conversion of Series L Preferred Stock shall be treated for all purposes as the record holder(s) of such shares of Common Stock and/or securities as of the close of business on the Optional Conversion Date or any applicable Conversion Date. In the event that a Holder shall not by written notice designate the name in which shares of Common Stock and/or cash, securities or other property (including payments of cash in lieu of fractional shares) to be issued or paid upon conversion of shares of Series L Preferred Stock should be registered or paid or the manner in which such shares should be delivered, the Corporation shall be entitled to register and deliver such shares, and make such payment, in the name of the Holder and in the manner shown on the records of the Corporation or, in the case of global certificates, through book-entry transfer through the Depository.

(v) Conversion into shares of Common Stock will occur on the Optional Conversion Date or any applicable Conversion Date as follows:

(A) On the Optional Conversion Date, certificates representing shares of Common Stock shall be issued and delivered to Holders or their designee upon presentation and surrender of the certificate evidencing the Series L Preferred Stock to the Conversion Agent if shares of the Series L Preferred Stock are held in certificated form, and, if required, the furnishing of appropriate endorsements and transfer documents and the payment of all transfer and similar taxes. If a Holder's interest is a beneficial interest in a global certificate representing Series L Preferred Stock, a book-entry transfer through the Depository will be made by the Conversion Agent upon compliance with the Depository's procedures for converting a beneficial interest in a global security.

(B) On the date of any conversion at the option of Holders pursuant to Section 5, Section 6(b), Section 6(c) or Section 6(d), if a Holder's interest is in certificated form, a Holder must do each of the following in order to convert:

- (1) complete and manually sign the conversion notice provided by the Conversion Agent, or a facsimile of the conversion notice, and deliver this irrevocable notice to the Conversion Agent;
- (2) surrender the shares of Series L Preferred Stock to the Conversion Agent;
- (3) if required, furnish appropriate endorsements and transfer documents;
- (4) if required, pay all transfer or similar taxes; and

(5) if required, pay funds equal to any declared and unpaid dividend payable on the next Dividend Payment Date to which such Holder is entitled.

If a Holder's interest is a beneficial interest in a global certificate representing Series L Preferred Stock, in order to convert a Holder must comply with paragraphs (3) through (5) listed above and comply with the Depository's procedures for converting a beneficial interest in a global security.

The date on which a Holder complies with the procedures in this clause (v) is the "*Conversion Date*."

(C) The Conversion Agent shall, on a Holder's behalf, convert the Series L Preferred Stock into shares of Common Stock, in accordance with the terms of the notice delivered by such Holder described in clause (B) above. If the Conversion Date is prior to the record date relating to any declared dividend for the Dividend Period in which a Holder elects to convert, the Holder will not receive any declared dividends for that Dividend Period. If the Conversion Date is after the record date relating to any declared dividend and prior to the Dividend Payment Date, the Holder will receive that dividend on the relevant Dividend Payment Date if the Holder was the holder of record on the record date for that dividend. However, if the Conversion Date is after the record date and prior to the Dividend Payment Date, whether or not the Holder was the holder of record on the record date, the Holder must pay to the Conversion Agent when it converts its shares of Series L Preferred Stock an amount in cash equal to the full dividend actually paid on the Dividend Payment Date for the then-current Dividend Period on the shares of Series L Preferred Stock being converted, unless the Holder's shares of Series L Preferred Stock are being converted as a result of a conversion pursuant to Section 6(b), Section 6(c) or Section 6(d).

**(b) Conversion at the Corporation's Option.**

(i) On or after January 30, 2013, the Corporation may, at its option, at any time or from time to time, cause some or all of the Series L Preferred Stock to be converted into shares of Common Stock at the then-Applicable Conversion Rate if, for 20 Trading Days during any period of 30 consecutive Trading Days the Closing Price of the Common Stock exceeds 130% of the then-Applicable Conversion Price of the Series L Preferred Stock. If the Corporation exercises its optional conversion right on January 30, 2013, it will still pay any dividend payable (in accordance with Section 4) on January 30, 2013 to the applicable Holders of record. The Corporation will provide notice of its optional conversion within five Trading Days of the end of the 30 consecutive Trading Day period.

(ii) If the Corporation elects to cause less than all of the Series L Preferred Stock to be converted under clause (i) above, the Conversion Agent will select the Series L Preferred Stock to be converted by lot, or on a *pro rata* basis or by another method the Conversion Agent considers fair and appropriate, including any method required by DTC or any successor depository (so long as such method is not prohibited by the rules of any stock exchange or quotation association on which the Series L Preferred Stock is then traded or quoted). If the Conversion Agent selects a portion of a Holder's Series L Preferred Stock for partial conversion at the Corporation's option and such Holder converts a portion of its shares of Series L Preferred Stock, the converted portion will be deemed to be from the portion selected for conversion at the Corporation's option under this Section 6(b).

(iii) If the Corporation exercises the optional conversion right described in this Section 6(b), the Corporation shall provide notice of such conversion by first class mail to each Holder of record for the shares of Series L Preferred Stock to be converted (such notice a "*Notice of Optional Conversion*") or issue a press release for publication and make this information available on its website. The Conversion Date shall be a date selected by the Corporation (the "*Optional Conversion Date*"), and the Notice of Optional Conversion must be mailed, or the Corporation must issue the press release, not more than 20 days prior to the Optional Conversion Date. In addition to any information required by applicable law or regulation, the Notice of Optional Conversion or press release shall state, as appropriate:

(A) the Optional Conversion Date;

(B) the aggregate number of shares of Series L Preferred Stock to be converted and, if less than all of the shares of Series L Preferred Stock are to be converted, the percentage of shares of Series L Preferred Stock to be converted; and

(C) the number of shares of Common Stock to be issued upon conversion of each share of Series L Preferred Stock.

**(c) Conversion Upon Make-Whole Acquisition.**

(i) In the event of a Make-Whole Acquisition, each Holder shall have the option to convert its shares of Series L Preferred Stock (a "*Make-Whole Acquisition Conversion*") during the period (the "*Make-Whole Acquisition Conversion Period*") beginning on the effective date of the Make-Whole Acquisition (the "*Make-Whole Acquisition Effective Date*") and ending on the date that is 30 days after the Make-Whole Acquisition Effective Date and receive an additional number of shares of Common Stock (the "*Make-Whole Shares*") as set forth in clause (ii) below.

(ii) The number of Make-Whole Shares per share of Series L Preferred Stock shall be determined by reference to the table below for the applicable Make-Whole Acquisition Effective Date and the applicable Make-Whole Acquisition Stock Price:

<u>Effective Date</u>	<u>\$40.00</u>	<u>\$41.00</u>	<u>\$42.00</u>	<u>\$44.00</u>	<u>\$47.00</u>	<u>\$50.00</u>	<u>\$60.00</u>	<u>\$80.00</u>	<u>\$110.00</u>	<u>\$150.00</u>	<u>\$200.00</u>
1/24/2008	5.000	4.7993	4.6190	4.2023	3.6851	3.2540	2.1450	1.0450	0.5164	0.2765	0.1468
1/30/2009	5.000	4.7512	4.4643	4.1386	3.5702	3.1760	2.0317	0.9563	0.4682	0.2480	0.1285
1/30/2010	5.000	4.6439	4.2929	3.9886	3.3830	2.9300	1.7617	0.6462	0.2287	0.1033	0.0390
1/30/2011	5.000	4.6049	4.2429	3.9250	3.3170	2.8040	1.5650	0.5300	0.1964	0.1067	0.0500
1/30/2012	5.000	4.5780	4.2405	3.8386	3.2596	2.5840	1.2667	0.2313	0.0755	0.0429	0.0206
1/30/2013	5.000	4.5366	4.2214	3.7932	3.1660	2.5260	1.0217	0.0000	0.0000	0.0000	0.0000
Thereafter	5.000	4.5366	4.2214	3.7932	3.1660	2.5260	1.0217	0.0000	0.0000	0.0000	0.0000

(A) The exact Make-Whole Acquisition Stock Prices and Make-Whole Acquisition Effective Dates may not be set forth in the table, in which case:

(1) if the Make-Whole Acquisition Stock Price is between two Make-Whole Acquisition Stock Price amounts in the table or the Make-Whole Acquisition Effective Date is between two dates in the table, the number of Make-Whole Shares will be determined by straight-line interpolation between the number of Make-Whole Shares set forth for the higher and lower Make-Whole Acquisition Stock Price amounts and the two Make-Whole Acquisition Effective Dates, as applicable, based on a 365-day year;

(2) if the Make-Whole Acquisition Stock Price is in excess of \$200.00 per share (subject to adjustment pursuant to Section 7 hereof), no Make-Whole Shares will be issued upon conversion of the Series L Preferred Stock; and

(3) if the Make-Whole Acquisition Stock Price is less than \$40.00 per share (subject to adjustment pursuant to Section 7 hereof), no Make-Whole Shares will be issued upon conversion of the Series L Preferred Stock.

(B) The Make-Whole Acquisition Stock Prices set forth in the table above are subject to adjustment pursuant to Section 7 hereof and shall be adjusted as of any date the Conversion Rate is adjusted. The adjusted Make-Whole Acquisition Stock Prices will equal the Make-Whole Acquisition Stock Prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Make-Whole Acquisition Stock Prices adjustment and the denominator of which is the Conversion Rate as so adjusted. Each of the number of Make-Whole Shares in the table shall also be subject to adjustment in the same manner as the Conversion Rate pursuant to Section 7.

(iii) On or before the twentieth day prior to the date the Corporation anticipates being the effective date for the Make-Whole Acquisition, a written notice shall be sent by or on behalf of the Corporation, by first-class mail, postage prepaid, to the Holders as they appear in the records of the Corporation. Such notice shall contain:

(A) the anticipated effective date of the Make-Whole Acquisition; and

(B) the date, which shall be 30 days after the anticipated Make-Whole Acquisition Effective Date, by which a Make-Whole Acquisition Conversion must be exercised.

(iv) On the Make-Whole Acquisition Effective Date, another written notice shall be sent by or on behalf of the Corporation, by first-class mail, postage prepaid, to the Holders as they appear in the records of the Corporation. Such notice shall contain:

(A) the date that shall be 30 days after the Make-Whole Acquisition Effective Date;

(B) the number of Make-Whole Shares;

(C) the amount of cash, securities and other consideration receivable by a Holder of Series L Preferred Stock upon conversion; and

(D) the instructions a Holder must follow to exercise its conversion option in connection with such Make-Whole Acquisition.

(v) To exercise a Make-Whole Acquisition Conversion option, a Holder must, no later than 5:00 p.m., New York City time on or before the date by which the Make-Whole Acquisition Conversion option must be exercised as specified in the notice delivered under clause (iv) above, comply with the procedures set forth in Section 6(a)(v)(B).

(vi) If a Holder does not elect to exercise the Make-Whole Acquisition Conversion option pursuant to this Section 6(c), the shares of Series L Preferred Stock or successor security held by it will remain outstanding, and the Holder will not be eligible to receive Make-Whole Shares.

(vii) Upon a Make-Whole Acquisition Conversion, the Conversion Agent shall, except as otherwise provided in the instructions provided by the Holder thereof in the written notice provided to the Corporation or its successor as set forth in Section 6(a)(iv) above, deliver to the Holder such cash, securities or other property as are issuable with respect to Make-Whole Shares in the Make-Whole Acquisition.

(viii) In the event that a Make-Whole Acquisition Conversion is effected with respect to shares of Series L Preferred Stock or a successor security representing less than all the shares of Series L Preferred Stock or a successor security held by a Holder, upon such Make-Whole Acquisition Conversion the Corporation or its successor shall execute and the Conversion Agent shall, unless otherwise instructed in writing, countersign and deliver to the Holder thereof, at the expense of the Corporation or its successors, a certificate evidencing the shares of Series L Preferred Stock or such successor security held by the Holder as to which a Make-Whole Acquisition Conversion was not effected.

**(d) Conversion Upon Fundamental Change.**

(i) In lieu of receiving the Make-Whole Shares, if the Reference Price in connection with a Make-Whole Acquisition is less than the Applicable Conversion Price (a "*Fundamental Change*"), a Holder may elect to convert each share of Series L Preferred Stock during the period beginning on the effective date of the Fundamental Change and ending on the date that is 30 days after the effective date of such Fundamental Change at an adjusted conversion price equal to the greater of (1) the Reference Price and (2) \$19.95, subject to adjustment as described in clause (ii) below (the "*Base Price*"). If the Reference Price is less than the Base Price, Holders will receive a maximum of 50.1253 shares of Common Stock per share of Series L Preferred Stock converted, subject to adjustment as described in clause (ii) below.

(ii) The Base Price shall be adjusted as of any date the Conversion Rate of the Series L Preferred Stock is adjusted pursuant to Section 7. The adjusted Base Price shall equal the Base Price applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Conversion Rate adjustment and the denominator of which is the Conversion Rate as so adjusted.

(iii) In lieu of issuing Common Stock upon conversion in the event of a Fundamental Change, the Corporation may at its option, and if it obtains Federal Reserve Board approval, pay an amount in cash (computed to the nearest cent) equal to the Reference Price for each share of Common Stock otherwise issuable upon conversion.

(iv) On or before the twentieth day prior to the date the Corporation anticipates being the effective date for the Fundamental Change, a written notice shall be sent by or on behalf of the Corporation, by first-class mail, postage prepaid, to the Holders as they appear in the records of the Corporation. Such notice shall contain:

(A) the anticipated effective date of the Fundamental Change; and

(B) the date, which shall be 30 days after the anticipated effective date of a Fundamental Change, by which a Fundamental Change conversion must be exercised.

(v) On the effective date of a Fundamental Change, another written notice shall be sent by or on behalf of the Corporation, by first-class mail, postage prepaid, to the Holders as they appear in the records of the Corporation. Such notice shall contain:

(A) the date that shall be 30 days after the effective date of the Fundamental Change;

(B) the adjusted conversion price following the Fundamental Change;

(C) the amount of cash, securities and other consideration received by a Holder of Series L Preferred Stock upon conversion; and

(D) the instructions a Holder must follow to exercise its conversion option in connection with such Fundamental Change.

(vi) To exercise its conversion option upon a Fundamental Change, a Holder must, no later than 5:00 p.m., New York City time on or before the date by which the conversion option upon the Fundamental Change must be exercised as specified in the notice delivered under clause (v) above, comply with the procedures set forth in Section 6(a)(v)(B) and indicate that it is exercising the Fundamental Change conversion option.

(vii) If a Holder does not elect to exercise its conversion option upon a Fundamental Change pursuant to this Section 6(d), the Holder will not be eligible to convert such Holder's shares at the Base Price and such Holder's shares of Series L Preferred Stock or successor security held by it will remain outstanding.

(viii) Upon a conversion upon a Fundamental Change, the Conversion Agent shall, except as otherwise provided in the instructions provided by the Holder thereof in the written notice provided to the Corporation or its successor as set forth in Section 6(a)(iv) above, deliver to the Holder such cash, securities or other property as are issuable with respect to the adjusted conversion price following the Fundamental Change.

(ix) In the event that a conversion upon a Fundamental Change is effected with respect to shares of Series L Preferred Stock or a successor security representing less than all the shares of Series L Preferred Stock or a successor security held by a Holder, upon such conversion the Corporation or its successor shall execute and the Conversion Agent shall, unless otherwise instructed in writing, countersign and deliver to the Holder thereof, at the expense of the Corporation, a certificate evidencing the shares of Series L Preferred Stock or such successor security held by the Holder as to which a conversion upon a Fundamental Change was not effected.

## Section 7. Anti-Dilution Adjustments.

(a) The Conversion Rate shall be subject to the following adjustments.

(i) **Stock Dividend Distributions.** If the Corporation pays dividends or other distributions on the Common Stock in shares of Common Stock, then the Conversion Rate in effect immediately following the record date for such dividend or distribution will be multiplied by the following fraction:

$$\frac{OS_1}{OS_0}$$

Where,

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the Ex-Date for such dividend or distribution.

$OS_1$  = the sum of the number of shares of Common Stock outstanding immediately prior to the Ex-Date for such dividend or distribution plus the total number of shares of Common Stock constituting such dividend.

Notwithstanding the foregoing, no adjustment will be made for the issuance of the Common Stock as a dividend or distribution to all holders of Common Stock that is made in lieu of quarterly dividends or distributions to such holders, to the extent such dividend or distribution does not exceed the dividend threshold amount defined in clause (v) below. For purposes of this paragraph, the amount of any dividend or distribution will equal the number of shares being issued multiplied by the average VWAP of the Common Stock over each of the five consecutive Trading Days prior to the record date for such distribution.



(ii) **Subdivisions, Splits, and Combination of the Common Stock** If the Corporation subdivides, splits, or combines the shares of Common Stock, then the Conversion Rate in effect immediately following the effective date of such share subdivision, split, or combination will be multiplied by the following fraction:

$$\frac{OS_1}{OS_0}$$

Where,

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the effective date of such share subdivision, split, or combination.

$OS_1$  = the number of shares of Common Stock outstanding immediately after the opening of business on the effective date of such share subdivision, split, or combination.

(iii) **Issuance of Stock Purchase Rights.** If the Corporation issues to all holders of the shares of Common Stock rights or warrants (other than rights or warrants issued pursuant to a dividend reinvestment plan or share purchase plan or other similar plans) entitling them, for a period of up to 60 days from the date of issuance of such rights or warrants, to subscribe for or purchase the shares of Common Stock (or securities convertible into shares of Common Stock) at less than (or having a conversion price per share less than) the Current Market Price on the date fixed for the determination of stockholders entitled to receive such rights or warrants, then the Conversion Rate in effect immediately following the close of business on the record date for such distribution will be multiplied by the following fraction:

$$\frac{OS_0 + X}{OS_0 + Y}$$

Where,

$OS_0$  = the number of shares of Common Stock outstanding at the close of business on the record date for such distribution.

$X$  = the total number of shares of Common Stock issuable pursuant to such rights or warrants (or upon conversion of such securities).

$Y$  = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights or warrants (or the conversion price for such securities) divided by the Current Market Price.

To the extent that such rights or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights or warrants upon the exercise of such rights or warrants, the Conversion Rate shall be readjusted to such Conversion Rate that would then be in effect had the adjustment made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In determining the aggregate offering price payable for such shares of Common Stock, the Conversion Agent will take into account any consideration received for such rights or warrants and the value of such consideration (if other than cash, to be determined by the Board).

(iv) **Debt or Asset Distributions.** If the Corporation distributes to all holders of shares of Common Stock evidences of indebtedness, shares of capital stock (other than Common Stock), securities, or other assets (excluding any dividend or distribution referred to in clauses (i) or (ii) above, any rights or warrants referred to in clause (iii) above, any

dividend or distribution paid exclusively in cash, any consideration payable in connection with a tender or exchange offer made by the Corporation or any of its subsidiaries, and any dividend of shares of capital stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit in the case of certain spin-off transactions as described below), then the Conversion Rate in effect immediately following the close of business on the record date for such distribution will be multiplied by the following fraction:

$$\frac{SP_0}{SP_0 - FMV}$$

Where,

$SP_0$  = the Current Market Price per share of Common Stock on the Ex-Date.

FMV = the fair market value of the portion of the distribution applicable to one share of Common Stock on the date immediately preceding the Ex-Date as determined by the Board.

In a spin-off, where the Corporation makes a distribution to all holders of shares of Common Stock consisting of capital stock of any class or series, or similar equity interests of, or relating to, a subsidiary or other business unit, the Conversion Rate will be adjusted on the fifteenth Trading Day after the effective date of the distribution by multiplying such Conversion Rate in effect immediately prior to such fifteenth Trading Day by the following fraction:

$$\frac{MP_0 + MP_s}{MP_0}$$

Where,

$MP_0$  = the average of the VWAP of the Common Stock over each of the first ten Trading Days commencing on and including the fifth Trading Day following the effective date of such distribution.

$MP_s$  = the average of the VWAP of the capital stock or equity interests representing the portion of the distribution applicable to one share of Common Stock over each of the first ten Trading Days commencing on and including the fifth Trading Day following the effective date of such distribution, or, if not traded on a national or regional securities exchange or over-the-counter market, the fair market value of the capital stock or equity interests representing the portion of the distribution applicable to one share of Common Stock on such date as determined by the Board.

(v) **Cash Distributions.** If the Corporation makes a distribution consisting exclusively of cash to all holders of the Common Stock, excluding (a) any cash dividend on the Common Stock to the extent that the aggregate cash dividend per share of the Common Stock does not exceed \$0.64 in any fiscal quarter (the “*Dividend Threshold Amount*”), (b) any cash that is distributed in a Reorganization Event or as part of a spin-off referred to in clause (iv) above, (c) any dividend or distribution, in connection with the Corporation’s liquidation, dissolution, or winding up, and (d) any consideration payable in connection with

a tender or exchange offer made by the Corporation or any of its subsidiaries, then in each event, the Conversion Rate in effect immediately following the record date for such distribution will be multiplied by the following fraction:

$$\frac{SP_0}{SP_0 - DIV}$$

Where,

SP<sub>0</sub> = the VWAP per share of Common Stock on the Trading Day immediately preceding the Ex-Date.

DIV = the cash amount per share of Common Stock of the dividend or distribution, as determined pursuant to the following paragraph.

If an adjustment is required to be made as set forth in this clause as a result of a distribution (1) that is a regularly scheduled quarterly dividend, such adjustment would be based on the amount by which such dividend exceeds the Dividend Threshold Amount or (2) that is not a regularly scheduled quarterly dividend, such adjustment would be based on the full amount of such distribution.

The Dividend Threshold Amount is subject to adjustment on an inversely proportional basis whenever the Conversion Rate is adjusted; *provided* that no adjustment will be made to the Dividend Threshold Amount for any adjustment made to the Conversion Rate pursuant to this clause (v).

(vi) **Self-Tender Offers and Exchange Offers** If the Corporation or any of its subsidiaries successfully completes a tender or exchange offer for the Common Stock where the cash and the value of any other consideration included in the payment per share of the Common Stock exceeds the VWAP per share of the Common Stock on the Trading Day immediately succeeding the expiration of the tender or exchange offer, then the Conversion Rate in effect at the close of business on such immediately succeeding Trading Day will be multiplied by the following fraction:

$$\frac{AC + (SP_0 \times OS_1)}{OS_0 \times SP_0}$$

Where,

SP<sub>0</sub> = the VWAP per share of Common Stock on the Trading Day immediately succeeding the expiration of the tender or exchange offer.

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the expiration of the tender or exchange offer, including any shares validly tendered and not withdrawn (the “*Purchased Shares*”).

OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after the expiration of the tender or exchange offer, less any Purchased Shares.

AC = the aggregate cash and fair market value of the other consideration payable in the tender or exchange offer, as determined by the Board.

In the event that the Corporation, or one of its subsidiaries, is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Corporation, or such subsidiary, is permanently prevented by applicable law

from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be readjusted to be such Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made.

(vii) **Rights Plans.** To the extent that the Corporation has a rights plan in effect with respect to the Common Stock on any Conversion Date, upon conversion of any shares of the Series L Preferred Stock, Holders will receive, in addition to the shares of Common Stock, the rights under the rights plan, unless, prior to such Conversion Date, the rights have separated from the shares of Common Stock, in which case the Conversion Rate will be adjusted at the time of separation as if the Corporation had made a distribution to all holders of the Common Stock as described in clause (iv) above, subject to readjustment in the event of the expiration, termination, or redemption of such rights.

(b) The Corporation may make such increases in the Conversion Rate, in addition to any other increases required by this Section 7, if the Corporation deems it advisable in order to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of shares of Common Stock (or issuance of rights or warrants to acquire shares of Common Stock) or from any event treated as such for income tax purposes or for any other reason.

(c)(i) All adjustments to the Conversion Rate shall be calculated to the nearest 1/10,000th of a share of Common Stock. No adjustment in the Conversion Rate will be made unless such adjustment would require an increase or decrease of at least one percent therein; *provided*, that any adjustments which by reason of this subparagraph are not required to be made shall be carried forward and taken into account in any subsequent adjustment; *provided further* that on the Optional Conversion Date, the Make-Whole Acquisition Effective Date or the effective date of a Fundamental Change, adjustments to the Conversion Rate will be made with respect to any such adjustment carried forward and which has not been taken into account before such date.

(ii) No adjustment to the Conversion Rate shall be made if Holders may participate in the transaction that would otherwise give rise to an adjustment, as a result of holding the Series L Preferred Stock, without having to convert the Series L Preferred Stock, as if they held the full number of shares of Common Stock into which their shares of the Series L Preferred Stock may then be converted.

(iii) The Applicable Conversion Rate will not be adjusted:

(A) upon the issuance of any shares of the Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Corporation's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(B) upon the issuance of any shares of the Common Stock or rights or warrants to purchase those shares pursuant to any present or future employee, director, or consultant benefit plan or program of or assumed by the Corporation or any of its subsidiaries;

(C) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the shares of the Series L Preferred Stock were first issued;

(D) for a change in the par value or no par value of the Common Stock; or

(E) for accrued and unpaid dividends on the Series L Preferred Stock.

(d) Whenever the Conversion Rate is to be adjusted in accordance with Section 7(a) or Section 7(b), the Corporation shall: (i) compute the Conversion Rate in accordance with Section 7(a) or Section 7(b), taking into account the one percent threshold set forth in Section 7(c) hereof, and prepare and transmit to the Transfer Agent an officer's certificate setting forth the Conversion Rate, the method of calculation thereof in reasonable detail, and the facts requiring such adjustment and upon which such adjustment is based; (ii) as soon as practicable following the occurrence of an event that requires an adjustment to the Conversion Rate pursuant to Section 7(a) or Section 7(b), taking into account the one percent threshold set forth in Section 7(c) hereof (or if the Corporation is not aware of such occurrence, as soon as practicable after becoming so aware), provide, or cause to be provided, a written notice to the Holders of the occurrence of such event; and (iii) as soon as practicable following the determination of the revised Conversion Rate in accordance with Section 7(a) or Section 7(b) hereof, provide, or cause to be provided, a written notice to the Holders setting forth in reasonable detail the method by which the adjustment to the Conversion Rate was determined and setting forth the revised Conversion Rate.

## Section 8. Reorganization Events.

(a) In the event of:

(i) the Corporation's consolidation or merger with or into another Person, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property of the Corporation or another Person;

(ii) any sale, transfer, lease, or conveyance to another Person of all or substantially all of the Corporation's property and assets, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property; or

(iii) any statutory exchange of the Corporation's securities with another Person (other than in connection with a merger or acquisition);

(any such event specified in this Section 8(a), a "*Reorganization Event*"); each share of Series L Preferred Stock outstanding immediately prior to such Reorganization Event will, without the consent of Holders, become convertible into the kind of securities, cash, and other property receivable in such Reorganization Event by a holder of the shares of Common Stock that was not the counterparty to the Reorganization Event or an affiliate of such other party (such securities, cash, and other property, the "*Exchange Property*").

(b) In the event that holders of the shares of the Common Stock have the opportunity to elect the form of consideration to be received in such transaction, the consideration that the Holders are entitled to receive will be deemed to be the types and amounts of consideration received by the majority of the holders of the shares of the Common Stock that affirmatively make an election (or of all such holders if none make an election). On each Conversion Date following a Reorganization Event, the Conversion Rate then in effect will be applied to the value on such Conversion Date of the securities, cash, or other property received per share of Common Stock, determined as set forth above. The amount of Exchange Property receivable upon conversion of any Series L Preferred Stock in accordance with Section 5, Section 6(b), Section 6(c) or Section 6(d) hereof shall be determined based upon the then Applicable Conversion Rate.

(c) The above provisions of this Section 8 shall similarly apply to successive Reorganization Events and the provisions of Section 7 shall apply to any shares of capital stock of the Corporation (or any successor) received by the holders of the Common Stock in any such Reorganization Event.

(d) The Corporation (or any successor) shall, within 20 days of the occurrence of any Reorganization Event, provide written notice to the Holders of such occurrence of such event and of the kind and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section 8.

## Section 9. Liquidation Rights.

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series L Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders before any distribution of the assets of the Corporation may be made to the Holders of any Junior Stock to receive in full a liquidating distribution in the amount of the liquidation preference of \$1,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. After payment of this liquidating distribution, the holders of Series L Preferred Stock will not be entitled to any further participation in any distribution of the Corporation's assets in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. Distributions will be made only to the extent of the Corporation's assets remaining available after satisfaction of all liabilities to creditors and subject to the rights of holders of any securities ranking senior to the Series L Preferred Stock and *pro rata* as to the Series L Preferred Stock and any other shares of the Corporation's stock ranking equally as to such distribution.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series L Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series L Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series L Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series L Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 9, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or business of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs

of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 10. Redemption.**

The Series L Preferred Stock shall not be redeemable either at the Corporation's option or at the option of the Holders at any time.

#### **Section 11. Voting Rights.**

**(a) General.** The holders of Series L Preferred Stock shall not be entitled to vote on any matter except as set forth in Section 11(b) below or as required by Delaware law.

##### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series L Preferred Stock or any other class or series of preferred stock ranking equally with Series L Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted by this Section 11 have been conferred ("*Voting Parity Securities*") and are exercisable, have not been declared and paid for the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not (a "*Nonpayment*")), the number of directors constituting the Board shall be increased by two, and the Holders of the outstanding shares of Series L Preferred Stock voting as a class with holders of any series of the Corporation's preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist, shall have the right, voting separately as a single class without regard to series, with voting rights allocated *pro rata* based on liquidation preference, to the exclusion of the holders of Common Stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and provided further that the Board shall at no time include more than two such directors. Each such director elected by the holders of shares of Series L Preferred Stock and any Voting Parity Securities is a "*Preferred Director*." Any Preferred Director elected by the holders of the Series L Preferred Stock and any Parity Stock may only be removed by the vote of the holders of record of the outstanding Series L Preferred Stock and any such Parity Stock, voting together as a single and separate class, at a meeting of the Corporation's stockholders called for that purpose. Any vacancy created by the removal of any Preferred Director may be filled only by the vote of the holders of the outstanding Series L Preferred Stock and any such Parity Stock, voting together as a single and separate class.

Notwithstanding the foregoing, without the consent of the Holders, so long as such action does not adversely affect the interests of the Holders, the Corporation may amend, alter, supplement, or repeal any terms of the Series L Preferred Stock for the following purposes:

(1) to cure any ambiguity, or to cure, correct, or supplement any provision contained in this Certificate of Designations that may be ambiguous, defective, or inconsistent; or

(2) to make any provision with respect to matters or questions relating to the Series L Preferred Stock that is not inconsistent with the provisions of this Certificate of Designations.

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the Holders Series L Preferred Stock and any Voting Parity Securities with exercisable voting rights, called as provided herein. At any time after the special voting right has vested pursuant to Section 11(b)(i) above, the secretary of the Corporation may, and upon the written request of any Holder of Series L Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series L Preferred Stock and any Voting Parity Securities with exercisable voting rights, for the election of the two directors to be elected by them as provided in Section 11(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any Holder of Series L Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 11(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 11(b)(iv). In case any

vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the Holders of the Series L Preferred Stock (voting together on a single and separate class with holders of any Voting Parity Securities, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** The voting rights described above will terminate, except as provided by law, upon the earlier of (A) the conversion of all of the Series L Preferred Stock or (B) the payment of full dividends on the Series L Preferred Stock and any other series of the Corporation's preferred stock, if any, for the equivalent of at least four quarterly Dividend Periods (but subject to revesting in the case of any similar non-payment of dividends in respect of future Dividend Periods) following a Nonpayment on the Series L Preferred Stock and any other series of the Corporation's preferred stock. Upon termination of the special voting right described above, the terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series L Preferred Stock (voting together as a single and separate class with holders of any Voting Parity Securities, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist).

#### **Section 12. Fractional Shares.**

(a) No fractional shares of Common Stock will be issued as a result of any conversion of shares of Series L Preferred Stock.

(b) In lieu of any fractional share of Common Stock otherwise issuable in respect of any conversion at the Corporation's option pursuant to Section 5 hereof or any conversion at the option of the Holder pursuant to Section 6(b), Section 6(c) or Section 6(d) hereof, the Corporation shall pay an amount in cash (computed to the nearest cent) equal to the same fraction of the Closing Price of the Common Stock determined as of the second Trading Day immediately preceding the effective date of conversion.

(c) If more than one share of the Series L Preferred Stock is surrendered for conversion at one time by or for the same Holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series L Preferred Stock so surrendered.

#### **Section 13. Reservation of Common Stock.**

(a) The Corporation shall at all times reserve and keep available out of its authorized and unissued Common Stock or shares held in the treasury by the Corporation, solely for issuance upon the conversion of shares of Series L Preferred Stock as provided in this Certificate of Designations, free from any preemptive or other similar rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series L Preferred Stock then outstanding, at the Applicable Conversion Price subject to adjustment as described under Section 7. For purposes of this Section 13(a), the number of shares of Common Stock that shall be deliverable upon the conversion of all outstanding shares of Series L Preferred Stock shall be computed as if at the time of computation all such outstanding shares were held by a single Holder.

(b) Notwithstanding the foregoing, the Corporation shall be entitled to deliver upon conversion of shares of Series L Preferred Stock, as herein provided, shares of Common Stock acquired by the Corporation (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as any such acquired shares are free and clear of all liens, charges, security interests or encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(c) All shares of Common Stock delivered upon conversion of the Series L Preferred Stock shall be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(d) Prior to the delivery of any securities that the Corporation shall be obligated to deliver upon conversion of the Series L Preferred Stock, the Corporation shall use its reasonable best efforts to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(e) The Corporation hereby covenants and agrees that, if at any time the Common Stock shall be listed on the New York Stock Exchange or any other national securities exchange or automated quotation system, the Corporation will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all the Common Stock issuable upon conversion of the Series L Preferred Stock; *provided, however*, that if the rules of such exchange or automated quotation system permit the Corporation to defer the listing of such Common Stock until the first conversion of Series L Preferred Stock into Common Stock in accordance

with the provisions hereof, the Corporation covenants to list such Common Stock issuable upon conversion of the Series L Preferred Stock in accordance with the requirements of such exchange or automated quotation system at such time.

**Section 14. Preemption.** The Holders of Series L Preferred Stock shall not have any rights of preemption.

**Section 15. Rank.** Notwithstanding anything set forth in the Corporation's Amended and Restated Certificate of Incorporation or this Certificate of Designations to the contrary, the Board, the Committee or any authorized committee of the Board, without the vote of the Holders of the Series L Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series L Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 16. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell shares of Series L Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board or any duly authorized committee of the Board may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 17. Unissued or Reacquired Shares.** Shares of Series L Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series and shall be available for subsequent issuance.

**Section 18. No Sinking Fund.** Shares of Series L Preferred Stock are not subject to the operation of a sinking fund.



**Exhibit E**

**Floating Rate Non-Cumulative Preferred Stock, Series 1**

**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS  
Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware**

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 1  
(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 1**

(1) Number of Shares and Designation. 21,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as Floating Rate Non-Cumulative Preferred Stock, Series 1 (hereinafter called the "Preferred Stock, Series 1").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 1, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 28, May 28, August 28 and November 28 (the "Payment Dates") commencing on February 28, 2009; provided that if any such Payment Date is not a New York Business Day and London Business Day, dividends (if declared) on the Preferred Stock, Series 1, will be paid on the immediately succeeding New York Business Day and London Business Day, without interest, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 1, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). "London Business Day" means a day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on November 28, 2008) and shall end on and include the calendar day next preceding the first day of the next Dividend Period. The dividend rate on the shares of Preferred Stock, Series 1 for each Dividend Period shall be a floating rate per annum equal to three-month U.S. dollar LIBOR plus 0.75%, but in no event will the rate be less than 3.00% per annum, of the \$30,000 liquidation preference per share of Preferred Stock, Series 1.

LIBOR, with respect to a Dividend Period, means the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three month period that normally appears on Moneyline Telerate Page 3750, as displayed on page "BBAM" (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Moneyline Telerate, Inc. on page BBAM or any other page that may replace page BBAM on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank offered

rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) The amount of dividends payable for each full Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 1, shall (if and when declared, as herein provided) be computed by dividing the dividend rate by four, rounded to the nearest one-hundredth of a percent, with five one-thousandths rounded upwards, and applying the resulting rate to the amount of \$30,000 per share. The amount of dividends payable for any period shorter than a full Dividend Period on the Preferred Stock, Series 1, shall (if and when declared, as herein provided) be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. The amount of dividends payable on the Preferred Stock, Series 1, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 1 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 1 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 1 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 1, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 1, all dividends declared upon shares of the Preferred Stock, Series 1, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared pro rata so that the amount of dividends declared per share on the Preferred Stock, Series 1, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 1 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 1 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 1 unless full dividends on all outstanding shares of Preferred Stock, Series 1 has been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 1 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 1 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 1 in the event that dividends have not been declared or paid on the Preferred Stock, Series 1 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 1 is not paid for any Dividend Period, the holders of Preferred Stock, Series 1 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 1 as to dividends and dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 1 if at the same time any arrears exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 1.

(f) Holders of shares of the Preferred Stock, Series 1, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 1. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 1, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 1, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 1, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 1, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 1, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 1, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 1, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation for purposes of this Section (3).

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 1, as provided in this Section (3), the holders of Preferred Stock, Series 1 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 1, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 1, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 1, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 1, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 1, may not be redeemed prior to November 28, 2009. On and after November 28, 2009, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 1, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 1 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 1 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 1, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 1, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 1, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after

which the holder or holders of such shares of Preferred Stock, Series 1, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 1, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 1, not previously called for redemption by lot or pro rata or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 1 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 1 will have no right to require redemption of any shares of Preferred Stock, Series 1.

(5) Terms Dependent on Regulatory Changes. If, (a) after the date of the issuance of the Preferred Stock, Series 1, the Corporation (by election or otherwise) becomes subject to any law, rule, regulation or guidance (together, "Regulations") relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as "Tier 1" in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such "Tier 1" capital (such capital described in either (x) or (y) is referred to below as "Tier 1 Capital"), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 1 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 1 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 1 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 1 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation's right to redeem the Preferred Stock, Series 1 on and after November 28, 2009 pursuant to Section 4 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation's right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 1 (upon a non-payment of dividends on the Preferred Stock, Series 1) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 1; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 1, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 1 so as to affect the shares of the Preferred Stock, Series 1 adversely.

As used above, the term "Required Unrestricted Tier 1 Provision" means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 1 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 1 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 1 of any such changes in the terms of the Preferred Stock, Series 1 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

(6) Voting Rights. The Preferred Stock, Series 1, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 1, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a "Nonpayment"), the holders of outstanding shares of the Preferred Stock, Series 1, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 1, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders. At elections for such directors, each holder of the Preferred Stock, Series 1, shall be entitled to three votes for each share of Preferred Stock, Series 1 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 1, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 1, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 1, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 1, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 1, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 1, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 1, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

- (i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 1, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or
- (ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 1, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 1, or of the holders thereof;

provided, however, that any increase in the amount of issued Preferred Stock, Series 1 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 1, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 1, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 1, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 1:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 1 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 1 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 1.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 1 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents

shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 1 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 1, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 1, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 1, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 1, if the holders of such class of stock and the Preferred Stock, Series 1, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 1, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 1, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 2," "6.375% Non-Cumulative Preferred Stock, Series 3," "Floating Rate Non-Cumulative Preferred Stock, Series 4," "Floating Rate Non-Cumulative Preferred Stock, Series 5," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "8.625% Non-Cumulative Preferred Stock, Series 8," "Cumulative Redeemable Preferred Stock, Series B," "Floating Rate Non-Cumulative Preferred Stock, Series E," "6.204% Non-Cumulative Preferred Stock, Series D," "Floating Rate Non-Cumulative Preferred Stock, Series F," "Adjustable Rate Non-Cumulative Preferred Stock, Series G," "8.20% Non-Cumulative Preferred Stock, Series H," "6.625% Non-Cumulative Preferred Stock, Series I," "7.25% Non-Cumulative Preferred Stock, Series J," "7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L," "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K," and "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M," and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 1, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 1, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 1, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31st day of December, 2008.

**BANK OF AMERICA CORPORATION**

By: /s/ TERESA M. BRENNER

Name: \_\_\_\_\_  
Teresa M. Brenner

Title: Associate General Counsel

*[Signature Page to Certificate of Designations, Series I]*

**Exhibit F**

**Floating Rate Non-Cumulative Preferred Stock, Series 2**

**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS**

**Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware**

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 2  
(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 2**

(1) Number of Shares and Designation. 37,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as Floating Rate Non-Cumulative Preferred Stock, Series 2 (hereinafter called the "Preferred Stock, Series 2").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 2, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, in arrears, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 28, May 28, August 28 and November 28 (the "Payment Dates"); provided that if any such Payment Date is not a New York Business Day and London Business Day, the Payment Date will be the next succeeding day that is a New York Business Day and London Business Day, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. The dividend, if declared, for the initial Dividend Period (as defined below) shall be paid on February 28, 2009. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 2, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 days nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). "London Business Day" means a day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on November 28, 2008) and shall end on and exclude the next succeeding Payment Date. The dividend rate on the shares of Preferred Stock, Series 2, for each Dividend Period shall be a floating rate *per annum* equal to three-month U.S. dollar LIBOR plus 0.65%, but in no event will the rate be less than 3.00% per annum, of the \$30,000 liquidation preference per share of Preferred Stock, Series 2.

The "three-month U.S. dollar LIBOR", with respect to a Dividend Period, means the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three month period that normally appears on Moneyline Telerate Page 3750, as displayed on page "BBAM" (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Moneyline Telerate, Inc. on page BBAM or any other page that may replace page BBAM



on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank offered rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If three-month U.S. dollar LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, three-month U.S. dollar LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine three-month U.S. dollar LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, three-month U.S. dollar LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) Dividends on the Preferred Stock, Series 2, shall (if and when declared, as herein provided) be computed on the basis of a 360-day year and the actual number of days elapsed in each Dividend Period. Accordingly, the amount of dividends payable per share for each Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 2 shall (if and when declared, as herein provided) equal the product of (i) the applicable dividend rate, (ii) \$30,000 and (iii) a fraction (A) the numerator of which will be the actual number of days elapsed in such Dividend Period, and (B) the denominator of which will be 360. The amount of dividends payable on the Preferred Stock, Series 2, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 2 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 2 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 2 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 2, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 2, all dividends declared upon shares of the Preferred Stock, Series 2, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared *pro rata* so that the amount of dividends declared per share on the Preferred Stock, Series 2, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 2 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 2 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 2 unless full dividends on all outstanding shares of Preferred Stock, Series 2 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 2 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 2 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 2 in the event that dividends have not been declared or paid on the Preferred Stock, Series 2 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 2 is not paid for any Dividend Period, the

holders of Preferred Stock, Series 2 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 2 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 2 if at the same time any arrears exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 2.

(f) Holders of shares of the Preferred Stock, Series 2, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 2. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 2, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 2, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 2, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 2, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 2, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 2, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 2, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation for purposes of this Section (3).

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 2, as provided in this Section (3), the holders of Preferred Stock, Series 2 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 2, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 2, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 2, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 2, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 2, may not be redeemed prior to November 28, 2009. On and after November 28, 2009, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 2, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 2 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 2 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 2, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 2, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions

that such funds be applied to the redemption of the shares of Preferred Stock, Series 2, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders of such shares of Preferred Stock, Series 2, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 2, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 2, not previously called for redemption by lot or *pro rata* or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 2 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 2 will have no right to require redemption of any shares of Preferred Stock, Series 2.

(5) Terms Dependent on Regulatory Changes. If, (a) the Corporation (by election or otherwise) is subject to any law, rule, regulation or guidance (together, “Regulations”) relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as “Tier 1” in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such “Tier 1” capital (such capital described in either (x) or (y) is referred to below as “Tier 1 Capital”), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 2 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 2 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 2 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 2 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation’s right to redeem the Preferred Stock, Series 2 on and after November 28, 2009 pursuant to Section 4 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation’s right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 2 (upon a non-payment of dividends on the Preferred Stock, Series 2) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 2; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 2, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 2 so as to affect the shares of the Preferred Stock, Series 2 adversely.

As used above, the term “Required Unrestricted Tier 1 Provision” means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 2 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 2 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 2 of any such changes in the terms of the Preferred Stock, Series 2 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

(6) Voting Rights. The Preferred Stock, Series 2, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 2, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a “Nonpayment”), the holders of outstanding shares of the Preferred Stock, Series 2, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 2, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders on the terms set forth below. At elections for such directors, each holder of the Preferred Stock, Series 2, shall be entitled to three votes for each share of Preferred Stock, Series 2 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them).

Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 2, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 2, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 2, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 2, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 2, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 2, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 2, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 2, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 2, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 2, or of the holders thereof; provided, however, that any increase in the amount of issued Preferred Stock, Series 2 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 2, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 2, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 2, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 2:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 2 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 2 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 2.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 2 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 2 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 2, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 2, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 2, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 2, if the holders of such class of stock and the Preferred Stock, Series 2, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 2, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 2, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 1," "6.375% Non-Cumulative Preferred Stock, Series 3," "Floating Rate Non-Cumulative Preferred Stock, Series 4," "Floating Rate Non-Cumulative Preferred Stock, Series 5," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "8.625% Non-Cumulative Preferred Stock, Series 8," "Cumulative Redeemable Preferred Stock, Series B," "Floating Rate Non-Cumulative Preferred Stock, Series E," "6.204% Non-Cumulative Preferred Stock, Series D," "Floating Rate Non-Cumulative Preferred Stock, Series F," "Adjustable Rate Non-Cumulative Preferred Stock, Series G," "8.20% Non-Cumulative Preferred Stock, Series H," "6.625% Non-Cumulative Preferred Stock, Series I," "7.25% Non-Cumulative Preferred Stock, Series J," "7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L," "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K," and "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M," and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 2, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 2, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 2, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31st day of December, 2008.

**BANK OF AMERICA CORPORATION**

/s/ TERESA M. BRENNER

By:

Name: Teresa M. Brenner

Title: Associate General Counsel

*[Signature Page to Certificate of Designations, Series 2]*

**Exhibit G**

**Floating Rate Non-Cumulative Preferred Stock, Series 4**

**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS**

**Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware**

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 4  
(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 4**

(1) Number of Shares and Designation. 20,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as Floating Rate Non-Cumulative Preferred Stock, Series 4 (hereinafter called the "Preferred Stock, Series 4").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 4, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, in arrears, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 28, May 28, August 28 and November 28 (the "Payment Dates") commencing on February 28, 2009; provided that if any such Payment Date is not a New York Business Day and London Business Day, the Payment Date will be the next succeeding day that is a New York Business Day and London Business Day, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 4, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 days nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). "London Business Day" means a day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on November 28, 2008) and shall end on and exclude the next succeeding Payment Date. The dividend rate on the shares of Preferred Stock, Series 4, for each Dividend Period shall be a floating rate *per annum* equal to three-month U.S. dollar LIBOR plus 0.75%, but in no event will the rate be less than 4.00% *per annum*, of the \$30,000 liquidation preference per share of Preferred Stock, Series 4.

The "three-month U.S. dollar LIBOR", with respect to a Dividend Period, means the rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three month period that normally appears on Moneyline Telerate Page 3750, as displayed on page "BBAM" (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Moneyline Telerate, Inc. on page BBAM or any other page that may replace page BBAM on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank

offered rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If three-month U.S. dollar LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, three-month U.S. dollar LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine three-month U.S. dollar LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, three-month U.S. dollar LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) Dividends on the Preferred Stock, Series 4, shall (if and when declared, as herein provided) be computed on the basis of a 360-day year and the actual number of days elapsed in each Dividend Period. Accordingly, the amount of dividends payable per share for each Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 4 shall (if and when declared, as herein provided) equal the product of (i) the applicable dividend rate, (ii) \$30,000 and (iii) a fraction (A) the numerator of which will be the actual number of days elapsed in such Dividend Period, and (B) the denominator of which will be 360. The amount of dividends payable on the Preferred Stock, Series 4, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 4 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 4 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 4 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 4, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 4, all dividends declared upon shares of the Preferred Stock, Series 4, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared *pro rata* so that the amount of dividends declared per share on the Preferred Stock, Series 4, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 4 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 4 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 4 unless full dividends on all outstanding shares of Preferred Stock, Series 4 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 4 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 4 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 4 in the event that dividends have not been declared or paid on the Preferred Stock, Series 4 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 4 is not paid for any Dividend Period, the holders of Preferred Stock, Series 4 will have no claim in respect of the unpaid amount so long as no dividend (other than those



referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 4 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 4 if at the same time any arrears exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 4.

(f) Holders of shares of the Preferred Stock, Series 4, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 4. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 4, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 4, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 4, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 4, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 4, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 4, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 4, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation for purposes of this Section (3).

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 4, as provided in this Section (3), the holders of Preferred Stock, Series 4 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 4, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 4, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 4, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 4, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 4, may not be redeemed prior to November 28, 2010. On and after November 28, 2010, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 4, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 4 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 4 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 4, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 4, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 4, so called for redemption. Any interest

accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders of such shares of Preferred Stock, Series 4, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 4, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 4, not previously called for redemption by lot or *pro rata* or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 4 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 4 will have no right to require redemption of any shares of Preferred Stock, Series 4.

(5) Terms Dependent on Regulatory Changes. If, (a) the Corporation (by election or otherwise) is subject to any law, rule, regulation or guidance (together, “Regulations”) relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as “Tier 1” in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such “Tier 1” capital (such capital described in either (x) or (y) is referred to below as “Tier 1 Capital”), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 4 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 4 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 4 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 4 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation’s right to redeem the Preferred Stock, Series 4 on and after November 28, 2010 pursuant to Section 4 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation’s right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 4 (upon a non-payment of dividends on the Preferred Stock, Series 4) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 4; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 4, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 4 so as to affect the shares of the Preferred Stock, Series 4 adversely.

As used above, the term “Required Unrestricted Tier 1 Provision” means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 4 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 4 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 4 of any such changes in the terms of the Preferred Stock, Series 4 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

For the avoidance of doubt, “amend”, “modify”, “change” and words of similar effect used in this Section (5) mean that the Preferred Stock, Series 4 shall have such additional or different rights, powers and preferences, and such qualifications,

limitations and restrictions as may be established by the Board of directors (or a duly authorized committee thereof) pursuant to this Section (5), subject to the limitations set forth herein.

(6) Voting Rights. The Preferred Stock, Series 4, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 4, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a “Nonpayment”), the holders of outstanding shares of the Preferred Stock, Series 4, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 4, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders on the terms set forth below. At elections for such directors, each holder of the Preferred Stock, Series 4, shall be entitled to three votes for each share of Preferred Stock, Series 4 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 4, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 4, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 4, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 4, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 4, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 4, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 4, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 4, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 4, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 4, or of the holders thereof; provided, however, that any increase in the amount of issued Preferred Stock, Series 4 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 4, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 4, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 4, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 4:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 4 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 4 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 4.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 4 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 4 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 4, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 4, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 4, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 4, if the holders of such class of stock and the Preferred Stock, Series 4, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 4, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 4, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 1" and "Floating Rate Non-Cumulative Preferred Stock, Series 2" and the Shares of Preferred Stock of the Corporation designated "6.375% Non-Cumulative Preferred Stock, Series 3," "Floating Rate Non-Cumulative Preferred Stock, Series 5," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "8.625% Non-Cumulative Preferred Stock, Series 8," "Cumulative Redeemable Preferred Stock, Series B," "Floating Rate Non-Cumulative Preferred Stock, Series E," "6.204% Non-Cumulative Preferred Stock, Series D," "Floating Rate Non-Cumulative Preferred Stock, Series F," "Adjustable Rate Non-Cumulative Preferred Stock, Series G," "8.20% Non-Cumulative Preferred Stock, Series H," "6.625% Non-Cumulative Preferred Stock, Series I," "7.25% Non-Cumulative Preferred Stock, Series J," "7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L," "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K," and "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M," and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 4, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 4, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 4, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31<sup>st</sup> day of December, 2008.

**BANK OF AMERICA CORPORATION**

By: /s/ TERESA M. BRENNER  
Name: \_\_\_\_\_  
Title: Teresa M. Brenner  
Associate General Counsel

*[Signature Page to Certificate of Designations, Series 4]*

**Exhibit H**

**Floating Rate Non-Cumulative Preferred Stock, Series 5**

**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS  
Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware**

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 5  
(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 5**

(1) Number of Shares and Designation. 50,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as Floating Rate Non-Cumulative Preferred Stock, Series 5 (hereinafter called the "Preferred Stock, Series 5").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 5, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, in arrears, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 21, May 21, August 21 and November 21 (the "Payment Dates") commencing on February 21, 2009; provided that if any such Payment Date is not a New York Business Day and London Business Day, the Payment Date will be the next succeeding day that is a New York Business Day and London Business Day, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 5, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 days nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). "London Business Day" means any day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on November 21, 2008) and shall end on and exclude the next succeeding Payment Date. The dividend rate on the shares of Preferred Stock, Series 5 for each Dividend Period shall be a floating rate per annum equal to three-month U.S. dollar LIBOR plus .50%, but in no event will the rate be less than 4.00% per annum, of the \$30,000 liquidation preference per share of Preferred Stock, Series 5.

The "three-month U.S. dollar LIBOR", with respect to a Dividend Period, means the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three month period that normally appears on Telerate Page 3750, as displayed on page "BBAM" (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Telerate, Inc. on page BBAM or any other page that may replace page BBAM on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank offered

rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If three-month U.S. dollar LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, three-month U.S. dollar LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine three-month U.S. dollar LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, three-month U.S. dollar LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) Dividends on the Preferred Stock, Series 5, shall (if and when declared, as herein provided) be computed on the basis of a 360-day year and the actual number of days elapsed in each Dividend Period. Accordingly, the amount of dividends payable per share for each Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 5 shall (if and when declared, as herein provided) equal the product of (i) the applicable dividend rate, (ii) \$30,000 and (iii) a fraction (A) the numerator of which will be the actual number of days elapsed in such Dividend Period, and (B) the denominator of which will be 360. The amount of dividends payable on the Preferred Stock, Series 5, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 5 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 5 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 5 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 5, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 5, all dividends declared upon shares of the Preferred Stock, Series 5, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared pro rata so that the amount of dividends declared per share on the Preferred Stock, Series 5, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 5 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 5 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 5 unless full dividends on all outstanding shares of Preferred Stock, Series 5 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 5 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 5 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 5 in the event that dividends have not been declared or paid on the Preferred Stock, Series 5 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 5 is not paid for any Dividend Period, the holders of Preferred Stock, Series 5 will have no claim in respect of the unpaid amount so long as no dividend (other than those

referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 5 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 5 if at the same time any arrearage exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 5.

(f) Holders of shares of the Preferred Stock, Series 5, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 5. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 5, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 5, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 5, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 5, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 5, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 5, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 5, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 5, as provided in this Section (3), the holders of Preferred Stock, Series 5 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 5, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 5, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 5, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 5, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 5, may not be redeemed prior to May 21, 2012. On and after May 21, 2012, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 5, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 5 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 5 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 5, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 5, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 5, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of



two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders of such shares of Preferred Stock, Series 5, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 5, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 5, not previously called for redemption by lot or *pro rata* or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 5 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 5 will have no right to require redemption of any shares of Preferred Stock, Series 5.

(5) Terms Dependent on Regulatory Changes. If, (a) the Corporation (by election or otherwise) is subject to any law, rule, regulation or guidance (together, “Regulations”) relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as “Tier 1” in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such “Tier 1” capital (such capital described in either (x) or (y) is referred to below as “Tier 1 Capital”), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 5 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 5 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 5 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 5 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation’s right to redeem the Preferred Stock, Series 5 on and after May 21, 2012 pursuant to Section 5 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation’s right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 5 (upon a non-payment of dividends on the Preferred Stock, Series 5) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 5; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 5, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 5 so as to affect the shares of the Preferred Stock, Series 5 adversely.

As used above, the term “Required Unrestricted Tier 1 Provision” means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 5 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 5 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 5 of any such changes in the terms of the Preferred Stock, Series 5 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

For the avoidance of doubt, “amend”, “modify”, “change” and words of similar effect used in this Section (5) mean that the Preferred Stock, Series 5 shall have such additional or different rights, powers and preferences, and such

qualifications, limitations and restrictions as may be established by the Board of Directors (or a duly authorized committee thereof) pursuant to this Section (5), subject to the limitations set forth herein.

(6) Voting Rights. The Preferred Stock, Series 5, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 5, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a "Nonpayment"), the holders of outstanding shares of the Preferred Stock, Series 5, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 5, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders on the terms set forth below. At elections for such directors, each holder of the Preferred Stock, Series 5, shall be entitled to three votes for each share of Preferred Stock, Series 5 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 5, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 5, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 5, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 5, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 5, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 5, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 5, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 5, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 5, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 5, or of the holders thereof; provided, however, that any increase in the amount of issued Preferred Stock, Series 5 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 5, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 5, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 5, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 5:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 5 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 5 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 5.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 5 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 5 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 5, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 5, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 5, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 5, if the holders of such class of stock and the Preferred Stock, Series 5, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 5, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 5, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 1," "Floating Rate Non-Cumulative Preferred Stock, Series 2," "6.375% Non-Cumulative Preferred Stock, Series 3," "Floating Rate Non-Cumulative Preferred Stock, Series 4," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "8.625% Non-Cumulative Preferred Stock, Series 8," "Cumulative Redeemable Preferred Stock, Series B," "Floating Rate Non-Cumulative Preferred Stock, Series E," "6.204% Non-Cumulative Preferred Stock, Series D," "Floating Rate Non-Cumulative Preferred Stock, Series F," "Adjustable Rate Non-Cumulative Preferred Stock, Series G," "8.20% Non-Cumulative Preferred Stock, Series H," "6.625% Non-Cumulative Preferred Stock, Series I," "7.25% Non-Cumulative Preferred Stock, Series J," "7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L," "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K," and "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M," and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 5, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 5, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 5, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31st day of December, 2008.

**BANK OF AMERICA CORPORATION**

By: /s/ TERESA M. BRENNER

Name:

Teresa M. Brenner

Title:

Associate General Counsel

*[Signature Page to Certificate of Designations, Series 5]*

## Exhibit I

### **Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U**

**CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES U  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Series U Final Terms Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on May 21, 2013, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated May 20, 2013, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

#### **Section 1. Designation.**

The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U” (the “*Series U Preferred Stock*”). Each share of Series U Preferred Stock shall be identical in all respects to every other share of Series U Preferred Stock. Series U Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

#### **Section 2. Number of Shares.**

The number of authorized shares of Series U Preferred Stock shall be 40,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series U Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series U Preferred Stock.

#### **Section 3. Definitions.**

As used herein with respect to Series U Preferred Stock:

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series U Preferred Stock during the Floating Rate Period (as defined below).

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States

that is enacted or becomes effective after the initial issuance of any shares of the Series U Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series U Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series U Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series U Preferred Stock then outstanding as “Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series U Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series U Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) 7.25% Non-Cumulative Preferred Stock, Series J, (h) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (i) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (j) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (k) 6% Cumulative Perpetual Preferred Stock, Series T, (l) Floating Rate Non-Cumulative Preferred Stock, Series 1, (m) Floating Rate Non-Cumulative Preferred Stock, Series 2, (n) 6.375% Non-Cumulative Preferred Stock, Series 3, (o) Floating Rate Non-Cumulative Preferred Stock, Series 4, (p) Floating Rate Non-Cumulative Preferred Stock, Series 5, (q) 6.70% Noncumulative Perpetual Preferred Stock, Series 6, (r) 6.25% Noncumulative Perpetual Preferred Stock, Series 7, (s) 8.625% Non-Cumulative Preferred Stock, Series 8, and (t) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series U Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series U Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series U Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01,” Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less

than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Calculation Agent (in consultation with the Corporation) to provide quotations are quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series U Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### Section 4. Dividends.

**(a) Rate.** Holders of Series U Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series U Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on June 1 and December 1 of each year, beginning on December 1, 2013, and (y) for the Floating Rate Period, quarterly in arrears on each March 1, June 1, September 1 and December 1, beginning on September 1, 2023; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless, for the Fixed Rate Period, that day falls in the next calendar year or, for the Floating Rate Period, that day falls in the next calendar month, then in each such case payment of such dividend will occur on the immediately preceding Business Day) (i) on or prior to June 1, 2023, without any interest or other payment in respect of such delay, and (ii) after June 1, 2023, with dividends accruing to the actual payment date (each such day on which dividends are payable a "Dividend Payment Date"). The period from, and including, the date of issuance of the Series U Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a "Dividend Period." Dividends on each share of Series U Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 5.200%, for each Dividend Period from the issue date to, but excluding, June 1, 2023 (the "Fixed Rate Period"), and (2) thereafter, Three-Month LIBOR plus a spread of 3.135%, for each Dividend Period from, and including, June 1, 2023 (the "Floating Rate Period"). The record date for payment of dividends on the Series U Preferred Stock shall be the fifteenth day of the calendar month immediately preceding the month in which the Dividend Payment Date falls. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series U Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series U Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series U Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series U Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series U Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *a pro*

*rata* portion, of the Series U Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series U Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series U Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series U Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series U Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series U Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series U Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series U Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series U Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series U Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series U Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series U Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series U Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series U Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series U Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series U Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series U Preferred Stock at the time outstanding, at any time on or after the Dividend Payment Date on June 1 2023, or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series U Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provide below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record



date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series U Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series U Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series U Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series U Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series U Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series U Preferred Stock at the time outstanding, the shares of Series U Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series U Preferred Stock in proportion to the number of Series U Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors or any duly authorized committee of the Board of Directors may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series U Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

## **Section 7. Voting Rights.**

**(a) General.** The holders of Series U Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series U Preferred Stock or any other class or series of preferred stock that ranks on parity with Series U Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series U Preferred Stock (together with holders of any class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the

exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series U Preferred Stock and any other class or series of preferred stock that ranks on parity with Series U Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series U Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series U Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series U Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series U Preferred Stock and any other class or series of preferred stock that ranks on parity with Series U Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series U Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series U Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series U Preferred Stock and any other class or series of preferred stock that ranks on parity with Series U Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series U Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series U Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series U Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least of the voting power of the Series U Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series U Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series U Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least of the shares of the Series U Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series U Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series U Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which (A) the shares of the Series U Preferred Stock remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series U Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series U Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series U Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series U Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series U Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series U Preferred Stock shall not have any rights of preemption or rights to convert such Series U Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series U Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series U Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series U Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series U Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designation to be executed by its duly authorized officer on this 21st day of May, 2013.

**BANK OF AMERICA CORPORATION**

/s/ ROSS E. JEFFRIES JR.

By: \_\_\_\_\_  
Name: Ross E. Jeffries, Jr.  
Title: Corporate Secretary and Associate General Council

**Exhibit J**

**6% Non-Cumulative Perpetual Preferred Stock, Series T**

**CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF DESIGNATIONS  
OF  
6% NON-CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES T  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 242  
of the General Corporation Law of the State of Delaware

**BANK OF AMERICA CORPORATION**, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Certificate of Designations of the Corporation's 6% Cumulative Perpetual Preferred Stock, Series T, which was previously filed with the Secretary of State of the State of Delaware on August 31, 2011, is hereby amended and restated in its entirety to read as follows:

Section 1. Designation. The distinctive serial designation of such series of Preferred Stock, par value \$0.01 per share, is "6% Non-Cumulative Perpetual Preferred Stock, Series T" ("Series T"). Each share of Series T shall be identical in all respects to every other share of Series T.

Section 2. Number of Shares. The authorized number of shares of Series T shall be 50,000. Shares of Series T that are redeemed, purchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Series T may be reissued only as shares of any now or hereafter designated series other than Series T).

Section 3. Definitions. As used herein with respect to Series T:

(a) "Amendment Effective Date" means May 7, 2014.

(b) "Bylaws" means the amended and restated bylaws of the Corporation, as they may be amended from time to time.

(c) "Business Day" means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York City generally are authorized or obligated by law, regulation or executive order to close.

(d) "Certificate of Designations" means this Certificate of Designations relating to the Series T, as it may be amended from time to time.

(e) "Certification of Incorporation" shall mean the amended and restated certificate of incorporation of the Corporation, as it may be amended from time to time, and shall include this Certificate of Designations.

(f) "Common Stock" means the common stock, par value \$0.01 per share, of the Corporation.

(g) "Junior Stock" means the Common Stock and any other class or series of stock of the Corporation (other than Series T) that ranks junior to Series T either or both as to the payment of dividends and/or as to the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(h) "Original Issue Date" means September 1, 2011.

(i) "Parity Stock" means any class or series of stock of the Corporation (other than Series T) that ranks equally with Series T both in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include the Corporation's (i) 7% Cumulative Redeemable Preferred Stock, Series B, (ii) 6.204% Non-Cumulative Preferred Stock, Series D, (iii) Floating Rate Non-Cumulative Preferred Stock, Series E, (iv) Floating Rate Non-Cumulative Preferred Stock, Series F, (v) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (vi) 6.625% Non-Cumulative Preferred Stock, Series I, (vii) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (viii) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (ix) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (x) Fixed-to-Floating Rate Semi-Annual Non-Cumulative Preferred Stock, Series U, (xi) Floating Rate Non-Cumulative Preferred Stock, Series 1, (xii) Floating Rate Non-Cumulative Preferred Stock, Series 2, (xiii) 6.375% Non-

Cumulative Preferred Stock, Series 3, (xiv) Floating Rate Non-Cumulative Preferred Stock, Series 4 and (xv) Floating Rate Non-Cumulative Preferred Stock, Series 5.

(j) “Preferred Stock” means any and all series of preferred stock of the Corporation, including the Series T.

(k) “Voting Parity Stock” means, with regard to any matter as to which the holders of Series T are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

(l) “Voting Preferred Stock” means, with regard to any matter as to which the holders of Series T are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Preferred Stock (other than Series T) that rank equally with Series T either as to the payment of dividends or as to the distribution of assets upon liquidation, dissolution or winding up of the Corporation and upon which like voting rights have been conferred and are exercisable with respect to such matter.

#### Section 4. Dividends.

(a) Rate. Holders of Series T shall be entitled to receive, on each share of Series T, out of funds legally available for the payment of dividends under Delaware law, non-cumulative cash dividends with respect to each Dividend Period (as defined below) at a per annum rate of 6% (the “Dividend Rate”) on the amount of \$100,000 per share of Series T. Following the Amendment Effective Date, dividends shall be payable in arrears (as provided below in this Section 4(a)), but only when, as and if declared by the Board of Directors (or a duly authorized committee of the Board of Directors), on each October 10, January 10, April 10 and July 10 (each, a “Dividend Payment Date”), commencing on October 10, 2011; *provided* that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series T on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day. Dividends payable on the Series T in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on the Series T on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Series T on any Dividend Payment Date will be payable to holders of record of Series T as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day before such Dividend Payment Date (as originally scheduled) or such other record date fixed by the Board of Directors (or a duly authorized committee of the Board of Directors) that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Each dividend period (a “Dividend Period”) shall commence on and include a Dividend Payment Date (other than the initial Dividend Period, which commenced on and included the Original Issue Date of the Series T) and shall end on and include the calendar day next preceding the next Dividend Payment Date. Dividends payable in respect of a Dividend Period shall be payable in arrears on the first Dividend Payment Date after such Dividend Period.

Holders of Series T shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on the Series T as specified in this Section 4 (subject to the other provisions of this Certificate of Designations).

(b) Non-Cumulative Dividends. Dividends on shares of Series T shall be non-cumulative. To the extent that any dividends on the shares of Series T with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series T shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to the Series T, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

(c) Priority of Dividends. So long as any share of Series T remains outstanding, no dividend shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than a dividend payable solely in Junior Stock), and no Common Stock, Junior Stock or Parity Stock shall be purchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock or of one share of Parity Stock for or into another share of Parity Stock (with the same or lesser per share liquidation amount) or Junior Stock) in respect of or during a particular Dividend Period as the case may be, unless dividends for such Dividend Period on all outstanding shares of Series T

have been or are contemporaneously declared and paid in full (or declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Series T on the applicable record date). The foregoing provision shall not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the cashless exercises and similar actions under any employee benefit plan in the ordinary course of business and consistent with past practice prior to the Original Issue Date; (ii) purchases or other acquisitions by a broker-dealer subsidiary of the Corporation solely for the purpose of market-making, stabilization or customer facilitation transactions in Junior Stock or Parity Stock in the ordinary course of its business; (iii) in connection with the issuance of Junior Stock or Parity Stock, ordinary sale and repurchase transactions to facilitate the distribution of such Junior Stock or Parity Stock; and (iv) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of, and at the ultimate cost of, any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon the Series T and any shares of Parity Stock, all dividends declared on the Series T and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared pro rata so that the respective amounts of such dividends declared shall bear the same ratio to each other as all declared and unpaid dividends per share on the Series T and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) bear to each other.

Subject to the foregoing, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors (or a duly authorized committee of the Board of Directors) may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and the Series T shall not be entitled to participate in any such dividends.

#### Section 5. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Series T shall be entitled to receive for each share of Series T, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, and after satisfaction of all liabilities and obligations to creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to the Series T as to such distribution, payment in full in an amount equal to the sum of (i) \$100,000 per share and (ii) any declared and unpaid dividends thereon, without cumulation of any undeclared dividends, to but excluding the date of liquidation, dissolution or winding up. The Series T may be fully subordinated to interests held by the U.S. government in the event that the Corporation enters into a receivership, insolvency, liquidation or similar proceeding.

(b) Partial Payment. If in any distribution described in Section 5(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay the Liquidation Preferences (as defined below) in full to all holders of Series T and all holders of any stock of the Corporation ranking equally with the Series T as to such distribution, the amounts paid to the holders of Series T and to the holders of all such other stock shall be paid *pro rata* in accordance with the respective aggregate Liquidation Preferences of the holders of Series T and the holders of all such other stock. In any such distribution, the “Liquidation Preference” of any holder of stock of the Corporation shall mean the amount otherwise payable to such holder in such distribution (assuming no limitation on the assets of the Corporation available for such distribution), including an amount equal to any declared but unpaid dividends, *provided* that the Liquidation Preference for any share of Series T shall be determined in accordance with Section 5(a) above.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Series T, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 5, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Series T receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

## Section 6. Redemption.

(a) Optional Redemption. The Corporation, at its option, subject to any required prior approval of the Board of Governors of the Federal Reserve System and to the satisfaction of any conditions set forth in the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System applicable to redemption of the shares of Series T, may redeem, in whole at any time or in part from time to time, but in any case no earlier than May 7, 2019 the shares of Series T at the time outstanding, upon notice given as provided in Section 6(c) below, at a redemption price equal to the sum of (i) \$105,000 per share and (ii) any declared and unpaid dividends thereon, without cumulation for any undeclared dividends, to but excluding the redemption date. The minimum number of shares of Series T redeemable at any time is the lesser of (x) 10,000 shares of Series T and (y) the number of shares of Series T outstanding. The redemption price for any shares of Series T shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 4 above.

(b) No Sinking Fund. The Series T will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series T will have no right to require redemption of any shares of Series T.

(c) Notice of Redemption. Notice of every redemption of shares of Series T shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series T designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series T. Notwithstanding the foregoing, if the Series T are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series T at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Series T to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notwithstanding anything to the contrary herein, upon receipt of any notice of redemption hereunder, the holder of any share of Series T outstanding at such time shall have five (5) Business Days to deliver to the Corporation written notice of its election to pay some or all of the applicable exercise price with respect to an exercise, in whole or in part, of such holder's rights under any warrant to purchase Common Stock of the Corporation originally issued by the Corporation in connection with the issuance of the Series T by means of a surrender to the Corporation of shares of the Series T in accordance with the terms and conditions hereof and of any such warrant, and the Corporation's right to redeem the shares of Series T specified in such notice of redemption shall be (x) tolled during such five (5) Business Day period and (y) if the holder so elects to exercise such warrant and surrender such shares of Series T, in whole or in part, automatically terminated only with respect to such shares of Series T to be so surrendered.

(d) Partial Redemption. In case of any redemption of part of the shares of Series T at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Corporation may determine to be fair and equitable. Subject to the provisions hereof, the Corporation shall have full power and authority to prescribe the terms and conditions upon which shares of Series T shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$50 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

Section 7. Conversion. Holders of Series T shares shall have no right to exchange or convert such shares into any other securities, except in connection with the surrender to the Corporation of shares of the Series T to satisfy any portion of the applicable exercise price with respect to an exercise, in whole or in part, of any warrant to purchase Common Stock of the Corporation issued in connection with the original issuance of the Series T by the Corporation.

Section 8. Voting Rights.

(a) General. The holders of Series T shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) Class Voting Rights as to Particular Matters. So long as any shares of Series T are outstanding, in addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation, the vote or consent of the holders of at least 66 2/3% of the shares of Series T and any Voting Preferred Stock at the time outstanding and entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior Stock. Any amendment or alteration of the Certificate of Incorporation to authorize or create, or increase the authorized amount of, any shares of any class or series of capital stock of the Corporation ranking senior to the Series T with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(ii) Amendment of Series T. Any amendment, alteration or repeal of any provision of the Certificate of Incorporation so as to materially and adversely affect the special rights, preferences, privileges or voting powers of the Series T, taken as a whole; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Series T, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series T remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series T immediately prior to such consummation, taken as a whole; *provided, however*, that for all purposes of this Section 8(b), any increase in the amount of the authorized Preferred Stock, or the creation and issuance, or an increase in the authorized or issued amount, of any other series of Preferred Stock ranking equally with and/or junior to the Series T with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers of the Series T.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 8 (b) would adversely affect the Series T and one or more but not all other series of Preferred Stock, then only the Series T and such series of Preferred Stock as are adversely affected by and entitled to vote on the matter shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 8 (b) would adversely affect the Series T but would not similarly adversely affect all other series of Voting Parity Stock, then only the Series T and each other series of Voting Parity Stock as is similarly adversely affected by and entitled to vote on the matter, if any, shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

(c) Series T Voting Rights as to Particular Matters. In addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation, so long as at least 10,000 shares of Series T are outstanding, the vote or consent of the holders of at least 50.1% of the shares of Series T at the time outstanding, voting in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization or Issuance of Senior Stock. Any amendment or alteration of the Certificate of Incorporation to authorize or create, or increase the authorized amount of, any shares of any class or series of capital stock of the Corporation, or the issuance of any shares of any class or series of capital stock of the Corporation, in each case, ranking senior to the Series T with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;



(ii) Amendment of Series T. Any amendment, alteration or repeal of any provision of the Certificate of Incorporation so as to affect or change the rights, preferences, privileges or voting powers of the Series T so as not to be substantially similar to those in effect immediately prior to such amendment, alteration or repeal; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Series T, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series T remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof as are substantially similar to the rights, preferences, privileges and voting powers, and limitations and restrictions of the Series T immediately prior to such consummation; *provided, however*, that for all purposes of this Section 8(c), the creation and issuance, or an increase in the authorized or issued amount, of any other series of Preferred Stock ranking equally with and/or junior to the Series T with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers of the Series T.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Series T shall be required pursuant to Section 8(b) or (c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of Series T (or, in the case of Section 8(c), more than 40,000 shares of Series T) shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 6 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the holders of Series T (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors (or a duly authorized committee of the Board of Directors), in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which the Series T is listed or traded at the time. Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Series T and any Voting Preferred Stock has been cast or given on any matter on which the holders of shares of Series T are entitled to vote shall be determined by the Corporation by reference to the specified liquidation amount of the shares voted or covered by the consent (*provided* that the specified liquidation amount for any share of Series T shall be the Liquidation Preference for such share) as if the Corporation were liquidated on the record date for such vote or consent, if any, or, in the absence of a record date, on the date for such vote or consent.

Section 9. Record Holders. To the fullest extent permitted by applicable law, the Corporation and the transfer agent for the Series T may deem and treat the record holder of any share of Series T as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

Section 10. Notices. All notices or communications in respect of Series T shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law. Notwithstanding the foregoing, if the Series T are issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of Series T in any manner permitted by such facility.

Section 11. No Preemptive Rights. No share of Series T shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

Section 12. Replacement Certificates. The Corporation shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Corporation.

Section 13. Surrender Rights. In connection with the exercise of any rights under any warrant to purchase Common Stock of the Corporation issued in connection with the original issuance of the Series T, a holder of shares of Series T shall have the right to pay some or all of the applicable exercise price with respect to an exercise, in whole or in part, of such holder's rights under any such warrant by means of a surrender to the Corporation of the applicable amount shares of the Series T.

Section 14. Other Rights. The shares of Series T shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law.

2. The foregoing amendment was duly adopted in accordance with the provision of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, BANK OF AMERICA CORPORATION has caused this Certificate of Amendment to be signed by its duly authorized officer this 7<sup>th</sup> day of May, 2014.

**BANK OF AMERICA CORPORATION**

/s/ ROSS E. JEFFRIES, JR.

By:

Name: \_\_\_\_\_  
Ross E. Jeffries, Jr.

Title: Deputy General Counsel, Corporate Secretary

**Exhibit K**

**Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X  
CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES X  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on September 2, 2014, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated May 7, 2014 and July 24, 2014, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X” (the “*Series X Preferred Stock*”). Each share of Series X Preferred Stock shall be identical in all respects to every other share of Series X Preferred Stock. Series X Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series X Preferred Stock shall be 80,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series X Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series X Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series X Preferred Stock:

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series X Preferred Stock during the Floating Rate Period (as defined below).

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series X Preferred Stock; (ii) proposed

change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series X Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series X Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series X Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series X Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series X Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) Floating Rate Non-Cumulative Preferred Stock, Series 1, (n) Floating Rate Non-Cumulative Preferred Stock, Series 2, (o) 6.375% Non-Cumulative Preferred Stock, Series 3, (p) Floating Rate Non-Cumulative Preferred Stock, Series 4, (q) Floating Rate Non-Cumulative Preferred Stock, Series 5, (r) if issued, 6.625% Non-Cumulative Preferred Stock, Series W, and (s) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series X Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series X Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series X Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01,” Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount

of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Calculation Agent (in consultation with the Corporation) to provide quotations are quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series X Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### Section 4. Dividends.

**(a) Rate.** Holders of Series X Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series X Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on March 5 and September 5 of each year, beginning on March 5, 2015, and (y) for the Floating Rate Period, quarterly in arrears on each March 5, June 5, September 5 and December 5, beginning on December 5, 2024; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless, for the Fixed Rate Period, that day falls in the next calendar year or, for the Floating Rate Period, that day falls in the next calendar month, then in each such case payment of such dividend will occur on the immediately preceding Business Day) (i) on or prior to September 5, 2024, without any interest or other payment in respect of such delay, and (ii) after September 5, 2024, with dividends accruing to the actual payment date (each such day on which dividends are payable a "Dividend Payment Date"). The period from, and including, the date of issuance of the Series X Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a "Dividend Period." Dividends on each share of Series X Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 6.250%, for each Dividend Period from the issue date to, but excluding, September 5, 2024 (the "Fixed Rate Period"), and (2) thereafter, Three-Month LIBOR plus a spread of 3.705%, for each Dividend Period from, and including, September 5, 2024 (the "Floating Rate Period"). The record date for payment of dividends on the Series X Preferred Stock shall be the fifteenth day of the calendar month preceding the month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series X Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series X Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series X Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series X Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series X Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of

other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a *pro rata* portion, of the Series X Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series X Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series X Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series X Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series X Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series X Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series X Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series X Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series X Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series X Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series X Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series X Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series X Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series X Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series X Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series X Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series X Preferred Stock at the time outstanding, at any time on or after September 5, 2024, or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series X Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be

\$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series X Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series X Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series X Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series X Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series X Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series X Preferred Stock at the time outstanding, the shares of Series X Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series X Preferred Stock in proportion to the number of Series X Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors or any duly authorized committee of the Board of Directors may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series X Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

## **Section 7. Voting Rights.**

**(a) General.** The holders of Series X Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series X Preferred Stock or any other class or series of preferred stock that ranks on parity with Series X Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series X Preferred Stock (together with holders of any class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right,

voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series X Preferred Stock and any other class or series of preferred stock that ranks on parity with Series X Preferred Stock as to payment of dividends having equivalent voting rights is a "Preferred Director."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series X Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series X Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series X Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series X Preferred Stock and any other class or series of preferred stock that ranks on parity with Series X Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series X Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series X Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series X Preferred Stock and any other class or series of preferred stock that ranks on parity with Series X Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series X Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series X Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series X Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least of the voting power of the Series X Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series X Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series X Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least of the shares of the Series X Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series X Preferred Stock.



Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series X Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series X Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series X Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series X Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series X Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series X Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series X Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series X Preferred Stock shall not have any rights of preemption or rights to convert such Series X Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series X Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series X Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series X Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series X Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 5th day of September, 2014.

**BANK OF AMERICA CORPORATION**

By: /s/ Ross E. Jeffries, Jr.  
Name: Ross E. Jeffries, Jr.  
Title: Corporate Secretary and Deputy General Counsel

**Exhibit L**

**FIXED-TO-FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES Z  
CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES Z  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on October 20, 2014, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated May 7, 2014 and July 24, 2014, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z” (the “*Series Z Preferred Stock*”). Each share of Series Z Preferred Stock shall be identical in all respects to every other share of Series Z Preferred Stock. Series Z Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series Z Preferred Stock shall be 56,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series Z Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series Z Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series Z Preferred Stock:

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series Z Preferred Stock during the Floating Rate Period (as defined below).

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series Z Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series Z

Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series Z Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series Z Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series Z Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series Z Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) 6.625% Non-Cumulative Preferred Stock, Series W, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (o) Floating Rate Non-Cumulative Preferred Stock, Series 1, (p) Floating Rate Non-Cumulative Preferred Stock, Series 2, (q) 6.375% Non-Cumulative Preferred Stock, Series 3, (r) Floating Rate Non-Cumulative Preferred Stock, Series 4, (s) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (t) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series Z Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series Z Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series Z Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01,” Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount

of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Calculation Agent (in consultation with the Corporation) to provide quotations are quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series Z Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series Z Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series Z Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on April 23 and October 23 of each year, beginning on April 23, 2015, and (y) for the Floating Rate Period, quarterly in arrears on each January 23, April 23, July 23 and October 23, beginning on January 23, 2025; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless, for the Fixed Rate Period, that day falls in the next calendar year or, for the Floating Rate Period, that day falls in the next calendar month, then in each such case payment of such dividend will occur on the immediately preceding Business Day) (i) on or prior to October 23, 2024, without any interest or other payment in respect of such delay, and (ii) after October 23, 2024, with dividends accruing to the actual payment date (each such day on which dividends are payable a "Dividend Payment Date"). The period from, and including, the date of issuance of the Series Z Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a "Dividend Period." Dividends on each share of Series Z Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 6.500%, for each Dividend Period from the issue date to, but excluding, October 23, 2024 (the "Fixed Rate Period"), and (2) thereafter, Three-Month LIBOR plus a spread of 4.174%, for each Dividend Period from, and including, October 23, 2024 (the "Floating Rate Period"). The record date for payment of dividends on the Series Z Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series Z Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series Z Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series Z Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series Z Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series Z Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of

other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a *pro rata* portion, of the Series Z Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series Z Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series Z Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series Z Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series Z Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series Z Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series Z Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series Z Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series Z Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series Z Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series Z Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series Z Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series Z Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series Z Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series Z Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series Z Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series Z Preferred Stock at the time outstanding, at any time on or after October 23, 2024, or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series Z Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be

\$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series Z Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series Z Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series Z Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series Z Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series Z Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series Z Preferred Stock at the time outstanding, the shares of Series Z Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series Z Preferred Stock in proportion to the number of Series Z Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series Z Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

## **Section 7. Voting Rights.**

**(a) General.** The holders of Series Z Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series Z Preferred Stock or any other class or series of preferred stock that ranks on parity with Series Z Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series Z Preferred Stock (together with holders of any class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right,

voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series Z Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Z Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series Z Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series Z Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series Z Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series Z Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Z Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series Z Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series Z Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series Z Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Z Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series Z Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series Z Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series Z Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least  $66\frac{2}{3}\%$  of the voting power of the Series Z Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series Z Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series Z Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least  $66\frac{2}{3}\%$  of the shares of the Series Z Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series Z Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series Z Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series Z Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series Z Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series Z Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series Z Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series Z Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series Z Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series Z Preferred Stock shall not have any rights of preemption or rights to convert such Series Z Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series Z Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series Z Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series Z Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series Z Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 23rd day of October, 2014.

**BANK OF AMERICA CORPORATION**

By: /s/ Ross E. Jeffries, Jr.  
Name: Ross E. Jeffries, Jr.  
Title: Corporate Secretary and Deputy General Counsel



**Exhibit M**

**6.500% NON-CUMULATIVE PREFERRED STOCK, SERIES Y  
CERTIFICATE OF DESIGNATIONS  
OF  
6.500% NON-CUMULATIVE PREFERRED STOCK, SERIES Y  
OF  
BANK OF AMERICA CORPORATION**

First: Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on January 20, 2015, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 12, 2015, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “6.500% Non-Cumulative Preferred Stock, Series Y” (the “*Series Y Preferred Stock*”). Each share of Series Y Preferred Stock shall be identical in all respects to every other share of Series Y Preferred Stock. Series Y Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series Y Preferred Stock shall be 44,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series Y Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series Y Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series Y Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series Y Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series Y Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series Y Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series Y Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series Y Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series Y Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) 6.625% Non-Cumulative Preferred Stock, Series W, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (o) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (p) Floating Rate Non-Cumulative Preferred Stock, Series 1, (q) Floating Rate Non-Cumulative Preferred Stock, Series 2, (r) 6.375% Non-Cumulative Preferred Stock, Series 3, (s) Floating Rate Non-Cumulative Preferred Stock, Series 4, (t) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (u) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series Y Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series Y Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series Y Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series Y Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series Y Preferred Stock, and no more, payable quarterly in arrears on January 27, April 27, July 27 and October 27 of each year, beginning on April 27, 2015; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), without any interest or other payment in respect of such delay (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series Y Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series Y Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to 6.500%. The record date for payment of dividends on the Series Y Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series Y Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series Y Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series Y Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such

dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series Y Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series Y Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series Y Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series Y Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series Y Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series Y Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series Y Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series Y Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series Y Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series Y Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series Y Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series Y Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series Y Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series Y Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series Y Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series Y Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series Y Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series Y Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the

Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### Section 6. Redemption.

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series Y Preferred Stock at the time outstanding, at any time on or after January 27, 2020 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series Y Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series Y Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series Y Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series Y Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series Y Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series Y Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series Y Preferred Stock at the time outstanding, the shares of Series Y Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series Y Preferred Stock in proportion to the number of Series Y Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series Y Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### Section 7. Voting Rights.

**(a) General.** The holders of Series Y Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series Y Preferred Stock or any other class or series of preferred stock that ranks on parity with Series Y Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series Y Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series Y Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Y Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series Y Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series Y Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series Y Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series Y Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Y Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series Y Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series Y Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series Y Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Y Preferred Stock as to payment of dividends, if any, for the equivalent of at least four quarterly Dividend Periods, then the right of the holders of Series Y Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series Y Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series Y Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the Series Y Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in

person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series Y Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series Y Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the shares of the Series Y Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series Y Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series Y Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series Y Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series Y Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series Y Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series Y Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series Y Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series Y Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series Y Preferred Stock shall not have any rights of preemption or rights to convert such Series Y Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series Y Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series Y Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series Y Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series Y Preferred Stock are not subject to the operation of a sinking fund.

Second: This Certificate of Designations shall be effective at 10:00 a.m. (Eastern Standard Time) on January 27, 2015.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 26th day of January, 2015.

**BANK OF AMERICA CORPORATION**

/s/ ROSS E. JEFFRIES, JR.

By:

Name:

Title:

\_\_\_\_\_  
Ross E. Jeffries, Jr.

Deputy General Counsel and Corporate Secretary

Exhibit N

**Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA  
CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES AA  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on March 12, 2015, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 12, 2015, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA” (the “*Series AA Preferred Stock*”). Each share of Series AA Preferred Stock shall be identical in all respects to every other share of Series AA Preferred Stock. Series AA Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series AA Preferred Stock shall be 76,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series AA Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series AA Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series AA Preferred Stock:

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series AA Preferred Stock during the Floating Rate Period (as defined below).

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series AA Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series



AA Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series AA Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series AA Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series AA Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series AA Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) 6.625% Non-Cumulative Preferred Stock, Series W, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (o) 6.500% Non-Cumulative Preferred Stock, Series Y, (p) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (q) Floating Rate Non-Cumulative Preferred Stock, Series 1, (r) Floating Rate Non-Cumulative Preferred Stock, Series 2, (s) 6.375% Non-Cumulative Preferred Stock, Series 3, (t) Floating Rate Non-Cumulative Preferred Stock, Series 4, (u) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (v) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series AA Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series AA Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series AA Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01,” Three-Month LIBOR will be determined on the basis of the rates at which

deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Calculation Agent (in consultation with the Corporation) to provide quotations are quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series AA Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### Section 4. Dividends.

**(a) Rate.** Holders of Series AA Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series AA Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on March 17 and September 17 of each year, beginning on September 17, 2015, and (y) for the Floating Rate Period, quarterly in arrears on each March 17, June 17, September 17 and December 17, beginning on June 17, 2025; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless, for the Fixed Rate Period, that day falls in the next calendar year or, for the Floating Rate Period, that day falls in the next calendar month, then in each such case payment of such dividend will occur on the immediately preceding Business Day) (i) on or prior to March 17, 2025, without any interest or other payment in respect of such delay, and (ii) after March 17, 2025, with dividends accruing to the actual payment date (each such day on which dividends are payable a "*Dividend Payment Date*"). The period from, and including, the date of issuance of the Series AA Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a "*Dividend Period*." Dividends on each share of Series AA Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a *rate per annum* equal to (1) 6.100%, for each Dividend Period from the issue date to, but excluding, March 17, 2025 (the "*Fixed Rate Period*"), and (2) thereafter, Three-Month LIBOR plus a spread of 3.898%, for each Dividend Period from, and including, March 17, 2025 (the "*Floating Rate Period*"). The record date for payment of dividends on the Series AA Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series AA Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series AA Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series AA Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series AA Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series AA Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or

into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series AA Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series AA Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series AA Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series AA Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series AA Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series AA Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series AA Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series AA Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series AA Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series AA Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series AA Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series AA Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series AA Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series AA Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series AA Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series AA Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series AA Preferred Stock at the time outstanding, at any time on or after March 17, 2025, or (ii) in whole but not in part, at any

time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series AA Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series AA Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series AA Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series AA Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series AA Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series AA Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series AA Preferred Stock at the time outstanding, the shares of Series AA Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series AA Preferred Stock in proportion to the number of Series AA Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series AA Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

## **Section 7. Voting Rights.**

**(a) General.** The holders of Series AA Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series AA Preferred Stock or any other class or series of preferred stock that ranks on parity with Series AA Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series AA Preferred Stock (together with holders of any class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have

the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series AA Preferred Stock and any other class or series of preferred stock that ranks on parity with Series AA Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series AA Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series AA Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series AA Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series AA Preferred Stock and any other class or series of preferred stock that ranks on parity with Series AA Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series AA Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series AA Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series AA Preferred Stock and any other class or series of preferred stock that ranks on parity with Series AA Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series AA Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series AA Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series AA Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the Series AA Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series AA Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series AA Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the shares of the Series AA Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series AA Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series AA Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series AA Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series AA Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series AA Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series AA Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series AA Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series AA Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series AA Preferred Stock shall not have any rights of preemption or rights to convert such Series AA Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series AA Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series AA Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series AA Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series AA Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 17<sup>th</sup> day of March, 2015.

**BANK OF AMERICA CORPORATION**

/s/ ROSS E. JEFFRIES, JR.

By: \_\_\_\_\_  
Name: Ross E. Jeffries, Jr.  
Title: Deputy General Counsel and Corporate Secretary

**Exhibit O**

**6.200% Non-Cumulative Preferred Stock, Series CC**

**CERTIFICATE OF DESIGNATIONS  
OF  
6.200% NON-CUMULATIVE PREFERRED STOCK, SERIES CC  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on January 21, 2016, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 12, 2015, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “6.200% Non-Cumulative Preferred Stock, Series CC” (the “*Series CC Preferred Stock*”). Each share of Series CC Preferred Stock shall be identical in all respects to every other share of Series CC Preferred Stock. Series CC Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series CC Preferred Stock shall be 44,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series CC Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series CC Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series CC Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series CC Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series CC Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series CC Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series CC Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the

Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series CC Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series CC Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) 6.625% Non-Cumulative Preferred Stock, Series W, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (o) 6.500% Non-Cumulative Preferred Stock, Series Y, (p) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (q) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (r) Floating Rate Non-Cumulative Preferred Stock, Series 1, (s) Floating Rate Non-Cumulative Preferred Stock, Series 2, (t) 6.375% Non-Cumulative Preferred Stock, Series 3, (u) Floating Rate Non-Cumulative Preferred Stock, Series 4, (v) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (w) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series CC Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series CC Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series CC Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series CC Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series CC Preferred Stock, and no more, payable quarterly in arrears on January 29, April 29, July 29 and October 29 of each year, beginning on April 29, 2016; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), without any interest or other payment in respect of such delay (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series CC Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series CC Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to 6.200%. The record date for payment of dividends on the Series CC Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series CC Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series CC Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation



shall have no obligation to pay, and the holders of Series CC Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series CC Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series CC Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series CC Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series CC Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series CC Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series CC Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series CC Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series CC Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series CC Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series CC Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series CC Preferred Stock shall not be entitled to participate in any such dividend.

## **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series CC Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series CC Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series CC Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series CC Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series CC Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series CC Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series CC Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the

Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### Section 6. Redemption.

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series CC Preferred Stock at the time outstanding, at any time on or after January 29, 2021 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series CC Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series CC Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series CC Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series CC Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series CC Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series CC Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series CC Preferred Stock at the time outstanding, the shares of Series CC Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series CC Preferred Stock in proportion to the number of Series CC Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series CC Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### Section 7. Voting Rights.

**(a) General.** The holders of Series CC Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series CC Preferred Stock or any other class or series of preferred stock that ranks on parity with Series CC Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series CC Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series CC Preferred Stock and any other class or series of preferred stock that ranks on parity with Series CC Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series CC Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series CC Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above,

the secretary of the Corporation may, and upon the written request of any holder of Series CC Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series CC Preferred Stock and any other class or series of preferred stock that ranks on parity with Series CC Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series CC Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series CC Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series CC Preferred Stock and any other class or series of preferred stock that ranks on parity with Series CC Preferred Stock as to payment of dividends, if any, for the equivalent of at least four quarterly Dividend Periods, then the right of the holders of Series CC Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series CC Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series CC Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66⅔% of the voting power of the Series CC Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any

capital stock ranking senior to the Series CC Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series CC Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the shares of the Series CC Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series CC Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series CC Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series CC Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series CC Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series CC Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series CC Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series CC Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series CC Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series CC Preferred Stock shall not have any rights of preemption or rights to convert such Series CC Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series CC Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series CC Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series CC Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series CC Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 29th day of January, 2016.

**BANK OF AMERICA CORPORATION**

By: /s/ Ross E. Jeffries, Jr.  
Name: Ross E. Jeffries, Jr.  
Title: Deputy General Counsel and Corporate Secretary

**Exhibit P**

**Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD  
CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES DD  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on March 7, 2016, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 12, 2015, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD” (the “*Series DD Preferred Stock*”). Each share of Series DD Preferred Stock shall be identical in all respects to every other share of Series DD Preferred Stock. Series DD Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series DD Preferred Stock shall be 40,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series DD Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series DD Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series DD Preferred Stock:

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series DD Preferred Stock during the Floating Rate Period (as defined below).

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series DD Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series

DD Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series DD Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series DD Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series DD Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series DD Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) 6.625% Non-Cumulative Preferred Stock, Series W, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (o) 6.500% Non-Cumulative Preferred Stock, Series Y, (p) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (q) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (r) 6.200% Non-Cumulative Preferred Stock, Series CC, (s) Floating Rate Non-Cumulative Preferred Stock, Series 1, (t) Floating Rate Non-Cumulative Preferred Stock, Series 2, (u) 6.375% Non-Cumulative Preferred Stock, Series 3, (v) Floating Rate Non-Cumulative Preferred Stock, Series 4, (w) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (x) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series DD Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series DD Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series DD Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend*”).

*Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01,” Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected and identified by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected and identified by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected and identified by the Corporation to provide quotations are quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series DD Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series DD Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series DD Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on March 10 and September 10 of each year, beginning on September 10, 2016, and (y) for the Floating Rate Period, quarterly in arrears on each March 10, June 10, September 10 and December 10, beginning on June 10, 2026; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless, for the Fixed Rate Period, that day falls in the next calendar year or, for the Floating Rate Period, that day falls in the next calendar month, then in each such case payment of such dividend will occur on the immediately preceding Business Day) (i) on or prior to March 10, 2026, without any interest or other payment in respect of such delay, and (ii) after March 10, 2026, with dividends accruing to the actual payment date (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series DD Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series DD Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a *rate per annum* equal to (1) 6.300%, for each Dividend Period from the issue date to, but excluding, March 10, 2026 (the “*Fixed Rate Period*”), and (2) thereafter, Three-Month LIBOR plus a spread of 4.553%, for each Dividend Period from, and including, March 10, 2026 (the “*Floating Rate Period*”). The record date for payment of dividends on the Series DD Preferred Stock shall be the fifteenth day of the calendar month preceding the month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series DD Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series DD Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series DD Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series DD Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series DD Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased,



redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a *pro rata* portion, of the Series DD Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series DD Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series DD Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series DD Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series DD Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series DD Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series DD Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series DD Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series DD Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series DD Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series DD Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series DD Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series DD Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series DD Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series DD Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series DD Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

## Section 6. Redemption.

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series DD Preferred Stock at the time outstanding, at any time on or after March 10, 2026, or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series DD Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series DD Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series DD Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series DD Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series DD Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series DD Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series DD Preferred Stock at the time outstanding, the shares of Series DD Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series DD Preferred Stock in proportion to the number of Series DD Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series DD Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

## Section 7. Voting Rights.

**(a) General.** The holders of Series DD Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series DD Preferred Stock or any other class or series of preferred stock that ranks on parity with Series DD Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more

quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series DD Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series DD Preferred Stock and any other class or series of preferred stock that ranks on parity with Series DD Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series DD Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series DD Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series DD Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series DD Preferred Stock and any other class or series of preferred stock that ranks on parity with Series DD Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series DD Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series DD Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series DD Preferred Stock and any other class or series of preferred stock that ranks on parity with Series DD Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series DD Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series DD Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series DD Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least  $66\frac{2}{3}\%$  of the voting power of the Series DD Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series DD Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series DD Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the

holders of at least 66⅔% of the shares of the Series DD Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series DD Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series DD Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series DD Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series DD Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series DD Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series DD Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series DD Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series DD Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series DD Preferred Stock shall not have any rights of preemption or rights to convert such Series DD Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series DD Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series DD Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series DD Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series DD Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 10th day of March, 2016.

**BANK OF AMERICA CORPORATION**

/s/ ROSS E. JEFFRIES, JR.

By: \_\_\_\_\_  
Name: Ross E. Jeffries, Jr.  
Title: Deputy General Counsel and Corporate Secretary

**Exhibit Q**

**6.000% Non-Cumulative Preferred Stock, Series EE  
CERTIFICATE OF DESIGNATIONS  
OF  
6.000% NON-CUMULATIVE PREFERRED STOCK, SERIES EE  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on April 18, 2016, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 12, 2015, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “6.000% Non-Cumulative Preferred Stock, Series EE” (the “*Series EE Preferred Stock*”). Each share of Series EE Preferred Stock shall be identical in all respects to every other share of Series EE Preferred Stock. Series EE Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series EE Preferred Stock shall be 36,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series EE Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series EE Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series EE Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series EE Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series EE Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series EE Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series EE Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series EE Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series EE Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) 6.625% Non-Cumulative Preferred Stock, Series W, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (o) 6.500% Non-Cumulative Preferred Stock, Series Y, (p) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (q) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (r) 6.200% Non-Cumulative Preferred Stock, Series CC, (s) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD, (t) Floating Rate Non-Cumulative Preferred Stock, Series 1, (u) Floating Rate Non-Cumulative Preferred Stock, Series 2, (v) 6.375% Non-Cumulative Preferred Stock, Series 3, (w) Floating Rate Non-Cumulative Preferred Stock, Series 4, (x) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (y) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series EE Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series EE Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series EE Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series EE Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series EE Preferred Stock, and no more, payable quarterly in arrears on January 25, April 25, July 25 and October 25 of each year, beginning on July 25, 2016; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), without any interest or other payment in respect of such delay (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series EE Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series EE Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to 6.000%. The record date for payment of dividends on the Series EE Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series EE Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series EE Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series EE Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any

subsequent Dividend Period with respect to Series EE Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series EE Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series EE Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series EE Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series EE Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series EE Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series EE Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series EE Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series EE Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series EE Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series EE Preferred Stock shall not be entitled to participate in any such dividend.

## **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series EE Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series EE Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series EE Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series EE Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series EE Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series EE Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series EE Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination



transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### Section 6. Redemption.

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series EE Preferred Stock at the time outstanding, at any time on or after April 25, 2021 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series EE Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series EE Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series EE Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series EE Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series EE Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series EE Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series EE Preferred Stock at the time outstanding, the shares of Series EE Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series EE Preferred Stock in proportion to the number of Series EE Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series EE Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### Section 7. Voting Rights.

**(a) General.** The holders of Series EE Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series EE Preferred Stock or any other class or series of preferred stock that ranks on parity with Series EE Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series EE Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series EE Preferred Stock and any other class or series of preferred stock that ranks on parity with Series EE Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series EE Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series EE Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series EE Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series EE Preferred Stock and any other class or series of preferred stock that ranks on parity with Series EE Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series EE Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series EE Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series EE Preferred Stock and any other class or series of preferred stock that ranks on parity with Series EE Preferred Stock as to payment of dividends, if any, for the equivalent of at least four quarterly Dividend Periods, then the right of the holders of Series EE Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series EE Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series EE Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the Series EE Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any

capital stock ranking senior to the Series EE Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series EE Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the shares of the Series EE Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series EE Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series EE Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series EE Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series EE Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series EE Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series EE Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series EE Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series EE Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series EE Preferred Stock shall not have any rights of preemption or rights to convert such Series EE Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series EE Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series EE Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series EE Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series EE Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 25th day of April, 2016.

**BANK OF AMERICA CORPORATION**

By: /s/ ROSS E. JEFFRIES, JR.  
Name: Ross E. Jeffries, Jr.  
Title: Deputy General Counsel and Corporate Secretary

**Exhibit R**

**Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series FF**

**CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES FF  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on March 8, 2018, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 31, 2018, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series FF” (the “*Series FF Preferred Stock*”). Each share of Series FF Preferred Stock shall be identical in all respects to every other share of Series FF Preferred Stock. Series FF Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series FF Preferred Stock shall be 94,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series FF Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series FF Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series FF Preferred Stock:

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series FF Preferred Stock during the Floating Rate Period.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United

States that is enacted or becomes effective after the initial issuance of any shares of the Series FF Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series FF Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series FF Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series FF Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series FF Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series FF Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) 6.625% Non-Cumulative Preferred Stock, Series W, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (o) 6.500% Non-Cumulative Preferred Stock, Series Y, (p) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (q) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (r) 6.200% Non-Cumulative Preferred Stock, Series CC, (s) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD, (t) 6.000% Non-Cumulative Preferred Stock, Series EE, (u) Floating Rate Non-Cumulative Preferred Stock, Series 1, (v) Floating Rate Non-Cumulative Preferred Stock, Series 2, (w) 6.375% Non-Cumulative Preferred Stock, Series 3, (x) Floating Rate Non-Cumulative Preferred Stock, Series 4, (y) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (z) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series FF Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series FF Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series FF Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“Three-Month LIBOR” means, with respect to any Dividend Period in the Floating Rate Period, the London interbank offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” at approximately 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If no offered rate appears on Reuters Screen Page “LIBOR01” on the relevant Dividend Determination Date at approximately 11:00 a.m., London time, then the Corporation will select and identify to the Calculation Agent four major banks in the London interbank market, and the Calculation Agent will request the principal London offices of each of such banks to provide a quotation of the rate at which three-month deposits in U.S. dollars in amounts of at least \$1,000,000 are offered by it to prime banks in the London interbank market, on that date and at that time. If at least two quotations are provided, Three-Month LIBOR will be the arithmetic average (rounded upward if necessary to the nearest .00001 of 1%) of the quotations provided. If less than two quotations are provided, the Corporation will select and identify to the Calculation Agent three major banks in New York City, and the Calculation Agent will request each of such banks to provide a quotation of the rate offered by it at approximately 11:00 a.m., New York City time, on the Dividend Determination Date for loans in U.S. dollars to leading European banks for a three-month period for the applicable Dividend Period in an amount of at least \$1,000,000. If three quotations are provided, Three-Month LIBOR will be the arithmetic average of the quotations provided. Otherwise, Three-Month LIBOR for that Dividend Period will be equal to Three-Month LIBOR in effect for the then-current Dividend Period or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period.

Notwithstanding the foregoing, if the Calculation Agent determines on or prior to the relevant Dividend Determination Date, after consultation with the Corporation, that Three-Month LIBOR has been discontinued, then the Corporation will appoint in its sole discretion an investment bank of national standing, which may be an affiliate of the Corporation, to determine whether there is a substitute or successor base rate to Three-Month LIBOR that is consistent with accepted market practice. If such investment bank of national standing determines that there is such a substitute or successor base rate, the Calculation Agent shall use such substitute or successor base rate. In such case, the Calculation Agent will implement changes to the business day convention, the definition of Business Day, the Dividend Determination Date and any method for obtaining the substitute or successor base rate if such rate is unavailable on the relevant Business Day, in a manner that is consistent with industry accepted practices for such substitute or successor base rate, all as directed by the investment bank of national standing. If the investment bank of national standing determines that there is no such substitute or successor base rate as so provided above, Three-Month LIBOR for that Dividend Period will be determined in accordance with the steps provided in the immediately preceding paragraph.

#### Section 4. Dividends.

**(a) Rate.** Holders of Series FF Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series FF Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on March 15 and September 15 of each year, beginning on September 15, 2018, and (y) for the Floating Rate Period, quarterly in arrears on each March 15, June 15, September 15 and December 15, beginning on June 15, 2028; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless, for the Fixed Rate Period, that day falls in the next calendar year or, for the Floating Rate Period, that day falls in the next calendar month, then in each such case payment of such dividend will occur on the immediately preceding Business Day) (i) on or prior to March 15, 2028, without any interest or other payment in respect of such delay, and (ii) after March 15, 2028, with dividends accruing to the actual payment date (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series FF Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series FF Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 5.875%, for each Dividend Period from the issue date to, but excluding, March 15, 2028 (the “*Fixed Rate Period*”), and (2) thereafter, Three-Month LIBOR plus a spread of 2.931%, for each Dividend Period from, and including, March 15, 2028 (the “*Floating Rate Period*”). The record date for payment of dividends on the Series FF Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward. The Calculation Agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be

made available to any holder of Series FF Preferred Stock upon request and will be final and binding in the absence of manifest error.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series FF Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series FF Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series FF Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series FF Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series FF Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series FF Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series FF Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series FF Preferred Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series FF Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series FF Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series FF Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series FF Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series FF Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series FF Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series FF Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series FF Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series FF Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series FF Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series FF Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series FF Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series FF Preferred Stock and all such Parity Stock.



**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series FF Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series FF Preferred Stock at the time outstanding, at any time on or after March 15, 2028, or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series FF Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series FF Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 calendar days and not more than 60 calendar days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series FF Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series FF Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series FF Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series FF Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series FF Preferred Stock at the time outstanding, the shares of Series FF Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series FF Preferred Stock in proportion to the number of Series FF Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series FF Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depositary Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depositary Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited

as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

**(a) General.** The holders of Series FF Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

##### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series FF Preferred Stock or any other class or series of preferred stock that ranks on parity with Series FF Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series FF Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series FF Preferred Stock and any other class or series of preferred stock that ranks on parity with Series FF Preferred Stock as to payment of dividends having equivalent voting rights is a "Preferred Director."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series FF Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series FF Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series FF Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series FF Preferred Stock and any other class or series of preferred stock that ranks on parity with Series FF Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series FF Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series FF Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series FF Preferred Stock and any other class or series of preferred stock that ranks on parity with Series FF Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series FF Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series FF Preferred Stock

(together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series FF Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the Series FF Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series FF Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series FF Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the shares of the Series FF Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series FF Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series FF Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series FF Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series FF Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series FF Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series FF Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series FF Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series FF Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series FF Preferred Stock shall not have any rights of preemption or rights to convert such Series FF Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series FF Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series FF Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Recquired Shares.** Shares of Series FF Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series FF Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 19<sup>th</sup> day of March, 2018.

**BANK OF AMERICA CORPORATION**

By: /s/ ROSS E. JEFFRIES, JR.  
Name: Ross E. Jeffries, Jr.  
Title: Deputy General Counsel and Corporate Secretary

**Exhibit S**

**6.000% Non-Cumulative Preferred Stock, Series GG**

**CERTIFICATE OF DESIGNATIONS  
OF  
6.000% NON-CUMULATIVE PREFERRED STOCK, SERIES GG  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on May 7, 2018, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 31, 2018, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “6.000% Non-Cumulative Preferred Stock, Series GG” (the “*Series GG Preferred Stock*”). Each share of Series GG Preferred Stock shall be identical in all respects to every other share of Series GG Preferred Stock. Series GG Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series GG Preferred Stock shall be 55,200. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series GG Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series GG Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series GG Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series GG Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series GG Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series GG Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series GG Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the

Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series GG Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series GG Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (j) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (l) 6.625% Non-Cumulative Preferred Stock, Series W, (m) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (n) 6.500% Non-Cumulative Preferred Stock, Series Y, (o) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (p) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (q) 6.200% Non-Cumulative Preferred Stock, Series CC, (r) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD, (s) 6.000% Non-Cumulative Preferred Stock, Series EE, (t) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series FF, (u) Floating Rate Non-Cumulative Preferred Stock, Series 1, (v) Floating Rate Non-Cumulative Preferred Stock, Series 2, (w) 6.375% Non-Cumulative Preferred Stock, Series 3, (x) Floating Rate Non-Cumulative Preferred Stock, Series 4, (y) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (z) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series GG Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series GG Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series GG Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series GG Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series GG Preferred Stock, and no more, payable quarterly in arrears on February 16, May 16, August 16 and November 16 of each year, beginning on August 16, 2018; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), without any interest or other payment in respect of such delay (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series GG Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series GG Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to 6.000%. The record date for payment of dividends on the Series GG Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series GG Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series GG Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not

accumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series GG Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series GG Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series GG Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series GG Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series GG Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series GG Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series GG Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series GG Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series GG Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series GG Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series GG Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series GG Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series GG Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series GG Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series GG Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series GG Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series GG Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series GG Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series GG Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of

the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series GG Preferred Stock at the time outstanding, at any time on or after May 16, 2023 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series GG Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series GG Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 calendar days and not more than 60 calendar days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series GG Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series GG Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series GG Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series GG Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series GG Preferred Stock at the time outstanding, the shares of Series GG Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series GG Preferred Stock in proportion to the number of Series GG Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series GG Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from the Corporation or such bank or trust company at any time after the redemption date from the funds so set aside or deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount set aside or deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

**(a) General.** The holders of Series GG Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.



**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series GG Preferred Stock or any other class or series of preferred stock that ranks on parity with Series GG Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series GG Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series GG Preferred Stock and any other class or series of preferred stock that ranks on parity with Series GG Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series GG Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series GG Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series GG Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series GG Preferred Stock and any other class or series of preferred stock that ranks on parity with Series GG Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series GG Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series GG Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series GG Preferred Stock and any other class or series of preferred stock that ranks on parity with Series GG Preferred Stock as to payment of dividends, if any, for the equivalent of at least four quarterly Dividend Periods, then the right of the holders of Series GG Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series GG Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series GG Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the Series GG Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in

person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series GG Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series GG Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least  $66\frac{2}{3}\%$  of the shares of the Series GG Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series GG Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series GG Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series GG Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series GG Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series GG Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series GG Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series GG Preferred Stock, with proper notice and sufficient funds having been set aside or deposited for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series GG Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series GG Preferred Stock shall not have any rights of preemption or rights to convert such Series GG Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series GG Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series GG Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series GG Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series GG Preferred Stock are not subject to the operation of a sinking fund

[Signature Page Follows]

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 16<sup>th</sup> day of May, 2018.

**BANK OF AMERICA CORPORATION**

By: /s/ ROSS E. JEFFRIES, JR.

Name: Ross E. Jeffries, Jr.

Title: Deputy General Counsel and Corporate Secretary

**Exhibit T**

**5.875% Non-Cumulative Preferred Stock, Series HH**

**CERTIFICATE OF DESIGNATIONS OF  
5.875% NON-CUMULATIVE PREFERRED STOCK, SERIES HH  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on July 17, 2018, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 31, 2018, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “5.875% Non-Cumulative Preferred Stock, Series HH” (the “*Series HH Preferred Stock*”). Each share of Series HH Preferred Stock shall be identical in all respects to every other share of Series HH Preferred Stock. Series HH Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series HH Preferred Stock shall be 34,160. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series HH Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series HH Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series HH Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series HH Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series HH Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series HH Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series HH Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series HH Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series HH Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (g) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (h) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (j) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (k) 6.625% Non-Cumulative Preferred Stock, Series W, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (m) 6.500% Non-Cumulative Preferred Stock, Series Y, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (o) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (p) 6.200% Non-Cumulative Preferred Stock, Series CC, (q) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD, (r) 6.000% Non-Cumulative Preferred Stock, Series EE, (s) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series FF, (t) 6.000% Non-Cumulative Preferred Stock, Series GG, (u) Floating Rate Non-Cumulative Preferred Stock, Series 1, (v) Floating Rate Non-Cumulative Preferred Stock, Series 2, (w) 6.375% Non-Cumulative Preferred Stock, Series 3, (x) Floating Rate Non-Cumulative Preferred Stock, Series 4, (y) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (z) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series HH Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series HH Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series HH Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series HH Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series HH Preferred Stock, and no more, payable quarterly in arrears on January 24, April 24, July 24 and October 24 of each year, beginning on October 24, 2018; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), without any interest or other payment in respect of such delay (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series HH Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series HH Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to 5.875%. The record date for payment of dividends on the Series HH Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series HH Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series HH Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series HH Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any

subsequent Dividend Period with respect to Series HH Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series HH Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series HH Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series HH Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series HH Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series HH Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series HH Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series HH Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series HH Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series HH Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series HH Preferred Stock shall not be entitled to participate in any such dividend.

## **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series HH Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series HH Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series HH Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series HH Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series HH Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series HH Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series HH Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination

transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series HH Preferred Stock at the time outstanding, at any time on or after July 24, 2023 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series HH Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series HH Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 calendar days and not more than 60 calendar days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series HH Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series HH Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series HH Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series HH Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series HH Preferred Stock at the time outstanding, the shares of Series HH Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series HH Preferred Stock in proportion to the number of Series HH Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series HH Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depositary Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from the Corporation or such bank or trust company at any time after the redemption date from the funds so set aside or deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depositary Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount set aside or deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

**(a) General.** The holders of Series HH Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

##### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series HH Preferred Stock or any other class or series of preferred stock that ranks on parity with Series HH Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series HH Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series HH Preferred Stock and any other class or series of preferred stock that ranks on parity with Series HH Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series HH Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series HH Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series HH Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series HH Preferred Stock and any other class or series of preferred stock that ranks on parity with Series HH Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series HH Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series HH Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series HH Preferred Stock and any other class or series of preferred stock that ranks on parity with Series HH Preferred Stock as to payment of dividends, if any, for the equivalent of at least four quarterly Dividend Periods, then the right of the holders of Series HH Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series HH Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series HH Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the Series HH Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series HH Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or



issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series HH Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the shares of the Series HH Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series HH Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series HH Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series HH Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series HH Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series HH Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series HH Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series HH Preferred Stock, with proper notice and sufficient funds having been set aside or deposited for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series HH Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series HH Preferred Stock shall not have any rights of preemption or rights to convert such Series HH Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series HH Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series HH Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series HH Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series HH Preferred Stock are not subject to the operation of a sinking fund.

[Signature Page Follows]

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 24<sup>th</sup> day of July, 2018.

**BANK OF AMERICA CORPORATION**

By: /s/ ROSS E. JEFFRIES, JR.

Name: Ross E. Jeffries, Jr.

Title: Deputy General Counsel and Corporate Secretary

Exhibit U

**Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series JJ**

**CERTIFICATE OF DESIGNATIONS OF  
FIXED-TO-FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES JJ  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on June 17, 2019, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 31, 2018, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series JJ” (the “*Series JJ Preferred Stock*”). Each share of Series JJ Preferred Stock shall be identical in all respects to every other share of Series JJ Preferred Stock. Series JJ Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series JJ Preferred Stock shall be 40,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series JJ Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series JJ Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series JJ Preferred Stock:

“*Benchmark*” means, initially, Three-Month LIBOR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month LIBOR or the then-current Benchmark, then “*Benchmark*” means the applicable Benchmark Replacement.

“*Benchmark Replacement*” means the Interpolated Benchmark with respect to the then-current Benchmark, plus the Benchmark Replacement Adjustment for such Benchmark; provided that if the Calculation Agent (after consulting with the Corporation) cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date, then “*Benchmark Replacement*” means the first alternative set forth in the order below that can be determined by the Corporation or the Calculation Agent (after consultation with the Corporation) as of the Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the Benchmark Replacement Adjustment;
- (2) the sum of: (a) Compounded SOFR and (b) the Benchmark Replacement Adjustment;

- (3) the sum of: (a) the alternate rate that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor (if any) and (b) the Benchmark Replacement Adjustment;
- (4) the sum of: (a) the ISDA Fallback Rate and (b) the Benchmark Replacement Adjustment;
- (5) the sum of: (a) the alternate rate that has been selected by the Corporation or the Calculation Agent (after consultation with the Corporation) as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate as a replacement for the then-current Benchmark for U.S. dollar-denominated floating rate securities at such time and (b) the Benchmark Replacement Adjustment.

“*Benchmark Replacement Adjustment*” means the first alternative set forth in the order below that can be determined by the Corporation or the Calculation Agent (after consultation with the Corporation) as of the Benchmark Replacement Date:

- (1) the spread adjustment (which may be a positive or negative value or zero) that has been selected or recommended by the Relevant Governmental Body or determined by the Corporation or the Calculation Agent (after consultation with the Corporation) in accordance with the method for calculating or determining such spread adjustment that has been selected or recommended by the Relevant Governmental Body, in each case for the applicable Unadjusted Benchmark Replacement;
- (2) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment;
- (3) the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Corporation or the Calculation Agent (after consultation with the Corporation) giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated floating rate securities at such time.

“*Benchmark Replacement Conforming Changes*” means, with respect to any Benchmark Replacement, changes to (1) any Dividend Determination Date, Dividend Payment Date or Dividend Period, (2) the manner, timing and frequency of determining dividends on the Series JJ Preferred Stock and the conventions relating to such determination, (3) rounding conventions, (4) tenors and (5) any other terms or provisions of the Series JJ Preferred Stock, in each case that the Corporation or the Calculation Agent (after consulting with the Corporation) determines, from time to time, to be appropriate to reflect the implementation of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Corporation or the Calculation Agent (after consulting with the Corporation) decides that implementation of any portion of such market practice is not administratively feasible or determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Corporation or the Calculation Agent (after consulting with the Corporation) determines is appropriate).

“*Benchmark Replacement Date*” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination.

“*Benchmark Transition Event*” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;

- (2) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day, subject to change in accordance with Section 4(a) hereof in the event a Benchmark Transition Event and Benchmark Replacement Date have occurred.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity (which may be an affiliate of the Corporation) as may be appointed by the Corporation to act as calculation agent for the Series JJ Preferred Stock during the Floating Rate Period.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series JJ Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series JJ Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series JJ Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series JJ Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series JJ Preferred Stock is outstanding.

“*Compounded SOFR*” means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate being established by the Corporation or the Calculation Agent (after consulting with the Corporation) in accordance with:

- (1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining Compounded SOFR; provided that:
- (2) if, and to the extent that, the Corporation or the Calculation Agent (after consulting with the Corporation) determine that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by Corporation or the Calculation Agent (after consulting with the Corporation) giving due consideration to any industry-accepted market practice for U.S. dollar-denominated floating rate securities at such time.

“*Corresponding Tenor*” with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the then-current Benchmark.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of Three-Month LIBOR in Section 4(a) hereof.

“*Dividend Payment Date*” means, for the Fixed Rate Period, June 20 and December 20 of each year, and for the Floating Rate Period, March 20, June 20, September 20, and December 20 of each year, subject to adjustment for non-Business Days as described in Section 4(a) hereof.

“*Dividend Period*” means the period from, and including, the date of issuance of the Series JJ Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date, subject to adjustment as described in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Federal Reserve Bank of New York’s Website*” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Interpolated Benchmark*” with respect to the Benchmark means the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor. If the Benchmark with respect to which the Interpolated Benchmark is being determined is Three-Month LIBOR, then the term “Benchmark” as used in clause (1) and (2) of the foregoing definition means the London interbank offered rate for deposits in U.S. dollars for the applicable periods specified in such clauses.

“*ISDA Definitions*” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

“*ISDA Fallback Adjustment*” means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.

“*ISDA Fallback Rate*” means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series JJ Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) Floating Rate Non-Cumulative Preferred Stock, Series E, (c) Floating Rate Non-Cumulative Preferred Stock, Series F, (d) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (e) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (f) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (h) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (i) 6.625% Non-Cumulative Preferred Stock, Series W, (j) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (k) 6.500% Non-Cumulative Preferred Stock, Series Y, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (m) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (n) 6.200% Non-Cumulative Preferred Stock, Series CC, (o) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD, (p) 6.000% Non-Cumulative Preferred Stock, Series EE, (q) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series FF, (r) 6.000% Non-Cumulative Preferred Stock, Series GG, (s) 5.875% Non-Cumulative Preferred Stock, Series HH, (t) Floating Rate Non-Cumulative Preferred Stock, Series I, (u) Floating Rate Non-Cumulative Preferred Stock, Series 2, (v) Floating Rate Non-Cumulative Preferred Stock, Series 4, (w) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (x) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series JJ Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reference Time*” with respect to any determination of the Benchmark means (1) if the Benchmark is Three-Month LIBOR, 11:00 a.m. (London time) on the relevant Dividend Determination Date, and (2) if the Benchmark is not Three-Month LIBOR, the time determined by the Corporation or the Calculation Agent (after consulting with the Corporation) in accordance with the Benchmark Replacement Conforming Changes.

“*Relevant Governmental Body*” means the Federal Reserve and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve and/or the Federal Reserve Bank of New York or any successor thereto.

“*Reuters Screen Page “LIBOR01”*” means the display on the Thomson Reuters Eikon service, or any successor or replacement service, on page LIBOR01, for the purpose of displaying London interbank offered rates of major banks for U.S. dollar deposits, or any successor or replacement page or pages on that service.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series JJ Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series JJ Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*SOFR*” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.

“*Term SOFR*” means the forward-looking term rate for the applicable Corresponding Tenor based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“*Three-Month LIBOR*” shall have the meaning set forth in Section 4(a) hereof.

“*Unadjusted Benchmark Replacement*” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

#### **Section 4. Dividends.**

(a) **Rate.** Holders of Series JJ Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series JJ Preferred Stock, and no more, payable (x) for the Fixed Rate Period (as defined below), semi-annually in arrears on June 20 and December 20 of each year, beginning on December 20, 2019; provided, however, that if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), in each case, without any additional dividends accruing or other payment adjustment and the relevant Dividend Period will not be adjusted; and (y) for the Floating Rate Period (as defined below), quarterly in arrears on March 20, June 20, September 20 and December 20 of each year, beginning on September 20, 2024; provided, however, that if any such day is not a Business Day, then the next succeeding day that is a Business Day will be the Dividend Payment Date for the relevant Dividend Period (unless that day falls in the next calendar month, in which case the immediately preceding Business Day will be the Dividend Payment Date for the relevant Dividend Period), in each case, with dividends accruing to, but excluding, the actual payment date, and the relevant Dividend Period will be adjusted accordingly. Dividends on each share of Series JJ Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 5.125%, for each Dividend Period from, and including, the issue date to, but excluding, June 20, 2024 (the “*Fixed Rate Period*”), and (2) thereafter, Three-Month LIBOR (as defined below) (which rate is subject to replacement as described below) plus a spread of 3.292%, for each Dividend Period from, and including, June 20, 2024 (the “*Floating Rate Period*”). If a Benchmark Transition Event and its related Benchmark Replacement Date occur with respect to Three-Month LIBOR, then dividends on the Preferred Stock during the Floating Rate Period thereafter will be determined not by reference to Three-Month LIBOR but instead by reference to the Benchmark Replacement, and, in connection with the implementation of the applicable Benchmark Replacement, the Corporation or the Calculation Agent (after consultation with the Corporation) may from time to time, on or after the Benchmark Replacement Date, to make Benchmark Replacement Conforming Changes, and any such Benchmark Replacement Conforming Changes will be deemed incorporated herein by reference and supersede and supplement the provisions of this Section 4(a) to the extent applicable.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the London interbank offered rate for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” at approximately 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If no such offered rate appears on Reuters Screen Page “LIBOR01” on the relevant Dividend Determination Date at approximately 11:00 a.m.,

London time, then the Corporation will select and identify to the Calculation Agent four major banks in the London interbank market, and the Calculation Agent will request each such bank to provide a quotation of the rate at which three-month deposits in U.S. dollars in amounts of at least \$1,000,000 commencing on the first day of the Dividend Period relating to such Dividend Determination Date are offered by it to prime banks in the London interbank market, at approximately 11:00 a.m. London time, on that Dividend Determination Date. If at least two quotations are provided, Three-Month LIBOR will be the arithmetic average (rounded upward if necessary to the nearest .00001%) of the quotations provided. If fewer than two quotations are provided, the Corporation will select and identify to the Calculation Agent three major banks in New York City, and the Calculation Agent will request each of such banks to provide a quotation of the rate offered by it at approximately 11:00 a.m., New York City time, on the Dividend Determination Date for loans in U.S. dollars to leading European banks for a three-month period for the applicable Dividend Period in an amount of at least \$1,000,000. If three quotations are provided, Three-Month LIBOR will be the arithmetic average of the quotations provided. Otherwise, Three-Month LIBOR for the applicable Dividend Period will be equal to Three-Month LIBOR in effect for the then-current Dividend Period or, in the case of the first Dividend Period during the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period.

Notwithstanding the foregoing paragraph, if the Corporation or the Calculation Agent (after consultation with the Corporation) determines on or prior to the relevant Dividend Determination Date that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any determination of Three-Month LIBOR or the then-current Benchmark on any date, the Benchmark Replacement will replace the then-current Benchmark for all purposes relating to the Preferred Stock during the Floating Rate Period in respect of such determination on such date and all determinations on subsequent dates. In connection with the implementation of a Benchmark Replacement, the Corporation or the Calculation Agent (after consultation with the Corporation) may make Benchmark Replacement Conforming Changes from time to time. Any determination, decision or election that may be made by Corporation or the Calculation Agent (after consultation with the Corporation) pursuant to this paragraph (including Benchmark Replacement Conforming Changes) and definitions related thereto, and any decision to take or refrain from taking any action or any selection (i) will be conclusive and binding absent manifest error; (ii) if made by the Corporation, will be made in the sole discretion of the Corporation; (iii) if made by the Calculation Agent, will be made after consultation with the Corporation, and the Calculation Agent will not make any such determination, decision or election to which the Corporation objects; and (iv) shall be deemed incorporated herein by reference and be part of the terms of the Series JJ Preferred Stock without consent from the holders of the Preferred Stock or any other party. Any determination, decision or election pursuant to the foregoing paragraphs not made by the Calculation Agent will be made by the Corporation on the basis as described above. In addition, the Corporation may designate an entity (which may be the Corporation's affiliate) to make any determination, decision or election that the Corporation has the right to make in connection with the foregoing paragraphs. For so long as any share of the Series JJ Preferred Stock is outstanding, the Corporation will maintain a record of any Benchmark Replacement and Benchmark Replacement Conforming Changes, and will provide a copy of such record to holders of the Series JJ Preferred Stock upon written request to the Corporation.

The record date for payment of dividends on the Series JJ Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward. The Calculation Agent's establishment of Three-Month LIBOR or the Benchmark Replacement, as applicable, and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series JJ Preferred Stock upon written request and will be final and binding in the absence of manifest error.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series JJ Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series JJ Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series JJ Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series JJ Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series JJ Preferred Stock remains outstanding, (i) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared and made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result



of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series JJ Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series JJ Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series JJ Preferred Stock remain outstanding, no dividends shall be declared and paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series JJ Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series JJ Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series JJ Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series JJ Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series JJ Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series JJ Preferred Stock shall not be entitled to participate in any such dividend.

## **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series JJ Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series JJ Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series JJ Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series JJ Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series JJ Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series JJ Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series JJ Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

## **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series JJ Preferred Stock at the time outstanding, at any time on or after June 20, 2024 or (ii) in whole but not in part, at any

time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series JJ Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series JJ Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 calendar days and not more than 60 calendar days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series JJ Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series JJ Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series JJ Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series JJ Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series JJ Preferred Stock at the time outstanding, the shares of Series JJ Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series JJ Preferred Stock in proportion to the number of Series JJ Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series JJ Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from the Corporation or such bank or trust company at any time after the redemption date from the funds so set aside or deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount set aside or deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

## **Section 7. Voting Rights.**

**(a) General.** The holders of Series JJ Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series JJ Preferred Stock or any other class or series of preferred stock that ranks on parity with Series JJ Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series JJ Preferred Stock (together with holders of any class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right,

voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series JJ Preferred Stock and any other class or series of preferred stock that ranks on parity with Series JJ Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series JJ Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series JJ Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series JJ Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series JJ Preferred Stock and any other class or series of preferred stock that ranks on parity with Series JJ Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series JJ Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series JJ Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series JJ Preferred Stock and any other class or series of preferred stock that ranks on parity with Series JJ Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series JJ Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series JJ Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series JJ Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least  $66\frac{2}{3}\%$  of the voting power of the Series JJ Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series JJ Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series JJ Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least  $66\frac{2}{3}\%$  of the shares of the Series JJ Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series JJ Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series JJ Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series JJ Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series JJ Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series JJ Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series JJ Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series JJ Preferred Stock, with proper notice and sufficient funds having been set aside or deposited for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series JJ Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series JJ Preferred Stock shall not have any rights of preemption or rights to convert such Series JJ Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series JJ Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series JJ Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series JJ Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series JJ Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF,** Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 20th day of June, 2019.

**BANK OF AMERICA CORPORATION**

By: /s/ ROSS E. JEFFRIES, JR.  
Name: Ross E. Jeffries, Jr.  
Title: Deputy General Counsel and Corporate Secretary

**Exhibit V**

**5.375% Non-Cumulative Preferred Stock, Series KK**

**CERTIFICATE OF DESIGNATIONS OF  
5.375% NON-CUMULATIVE PREFERRED STOCK, SERIES KK  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on June 18, 2019, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 31, 2018, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “5.375% Non-Cumulative Preferred Stock, Series KK” (the “*Series KK Preferred Stock*”). Each share of Series KK Preferred Stock shall be identical in all respects to every other share of Series KK Preferred Stock. Series KK Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series KK Preferred Stock shall be 60,950. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series KK Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series KK Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series KK Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series KK Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series KK Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series KK Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series KK Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series KK Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” means March 25, June 25, September 25 and December 25 of each year, beginning on September 25, 2019.

“*Dividend Period*” means the period from, and including, the date of issuance of the Series KK Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series KK Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) Floating Rate Non-Cumulative Preferred Stock, Series E, (c) Floating Rate Non-Cumulative Preferred Stock, Series F, (d) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (e) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (f) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (h) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (i) 6.625% Non-Cumulative Preferred Stock, Series W, (j) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (k) 6.500% Non-Cumulative Preferred Stock, Series Y, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (m) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (n) 6.200% Non-Cumulative Preferred Stock, Series CC, (o) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD, (p) 6.000% Non-Cumulative Preferred Stock, Series EE, (q) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series FF, (r) 6.000% Non-Cumulative Preferred Stock, Series GG, (s) 5.875% Non-Cumulative Preferred Stock, Series HH, (t) Floating Rate Non-Cumulative Preferred Stock, Series 1, (u) Floating Rate Non-Cumulative Preferred Stock, Series 2, (v) Floating Rate Non-Cumulative Preferred Stock, Series 4, (w) Floating Rate Non-Cumulative Preferred Stock, Series 5, (x) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series JJ, and (y) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series KK Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series KK Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series KK Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series KK Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series KK Preferred Stock, and no more, payable quarterly in arrears on March 25, June 25, September 25 and December 25 of each year, beginning on September 25, 2019; provided, however, that if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), in each case, without any additional dividends accruing or other payment adjustment and the relevant Dividend Period will not be adjusted. Dividends on each share of Series KK Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to 5.375%. The record date for payment of dividends on the Series KK Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series KK Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series KK Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series KK Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series KK Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series KK Preferred Stock remains outstanding, (i) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series KK Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series KK Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series KK Preferred Stock remain outstanding, no dividends shall be declared and paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series KK Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series KK Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series KK Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series KK Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series KK Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series KK Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series KK Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series KK Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series KK Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series KK Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series KK Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series KK Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series KK Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

## Section 6. Redemption.

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series KK Preferred Stock at the time outstanding, at any time on or after June 25, 2024 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series KK Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series KK Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 calendar days and not more than 60 calendar days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series KK Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series KK Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series KK Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series KK Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series KK Preferred Stock at the time outstanding, the shares of Series KK Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series KK Preferred Stock in proportion to the number of Series KK Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series KK Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from the Corporation or such bank or trust company at any time after the redemption date from the funds so set aside or deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount set aside or deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

## Section 7. Voting Rights.

**(a) General.** The holders of Series KK Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series KK Preferred Stock or any other class or series of preferred stock that ranks on parity with Series KK Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in



an aggregate amount equal to, as to any class or series, the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series KK Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series KK Preferred Stock and any other class or series of preferred stock that ranks on parity with Series KK Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series KK Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series KK Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series KK Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series KK Preferred Stock and any other class or series of preferred stock that ranks on parity with Series KK Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series KK Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series KK Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series KK Preferred Stock and any other class or series of preferred stock that ranks on parity with Series KK Preferred Stock as to payment of dividends, if any, for the equivalent of at least four quarterly Dividend Periods, then the right of the holders of Series KK Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series KK Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series KK Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the Series KK Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series KK Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as

any shares of the Series KK Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66⅔% of the shares of the Series KK Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series KK Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series KK Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series KK Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series KK Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series KK Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series KK Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series KK Preferred Stock, with proper notice and sufficient funds having been set aside or deposited for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series KK Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series KK Preferred Stock shall not have any rights of preemption or rights to convert such Series KK Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series KK Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series KK Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series KK Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series KK Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 25th day of June, 2019.

**BANK OF AMERICA CORPORATION**

By:	_____ /s/ ROSS E. JEFFRIES, JR.
Name:	Ross E. Jeffries, Jr.
Title:	Deputy General Counsel and Corporate Secretary

**Exhibit W**

**5.000% Non-Cumulative Preferred Stock, Series LL**

**CERTIFICATE OF DESIGNATIONS OF  
5.000% NON-CUMULATIVE PREFERRED STOCK, SERIES LL  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on September 10, 2019, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors duly adopted on June 27, 2019, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “5.000% Non-Cumulative Preferred Stock, Series LL” (the “*Series LL Preferred Stock*”). Each share of Series LL Preferred Stock shall be identical in all respects to every other share of Series LL Preferred Stock. Series LL Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series LL Preferred Stock shall be 52,400. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series LL Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series LL Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series LL Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series LL Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series LL Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series LL Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series LL Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series LL Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” means March 17, June 17, September 17 and December 17 of each year, beginning on December 17, 2019.

“*Dividend Period*” means the period from, and including, the date of issuance of the Series LL Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series LL Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) Floating Rate Non-Cumulative Preferred Stock, Series E, (c) Floating Rate Non-Cumulative Preferred Stock, Series F, (d) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (e) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (f) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (h) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (j) 6.500% Non-Cumulative Preferred Stock, Series Y, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (m) 6.200% Non-Cumulative Preferred Stock, Series CC, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD, (o) 6.000% Non-Cumulative Preferred Stock, Series EE, (p) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series FF, (q) 6.000% Non-Cumulative Preferred Stock, Series GG, (r) 5.875% Non-Cumulative Preferred Stock, Series HH, (s) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series JJ, (t) 5.375% Non-Cumulative Preferred Stock, Series KK, (u) Floating Rate Non-Cumulative Preferred Stock, Series 1, (v) Floating Rate Non-Cumulative Preferred Stock, Series 2, (w) Floating Rate Non-Cumulative Preferred Stock, Series 4, (x) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (y) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series LL Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series LL Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series LL Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series LL Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series LL Preferred Stock, and no more, payable quarterly in arrears on March 17, June 17, September 17 and December 17 of each year, beginning on December 17, 2019; provided, however, that if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), in each case, without any additional dividends accruing or other payment adjustment and the relevant Dividend Period will not be adjusted. Dividends on each share of Series LL Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to 5.000%. The record date for payment of dividends on the Series LL Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series LL Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series LL Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series LL Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any

subsequent Dividend Period with respect to Series LL Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series LL Preferred Stock remains outstanding, (i) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series LL Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series LL Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series LL Preferred Stock remain outstanding, no dividends shall be declared and paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series LL Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series LL Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series LL Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series LL Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series LL Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series LL Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series LL Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series LL Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series LL Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series LL Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series LL Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series LL Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series LL Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination

transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series LL Preferred Stock at the time outstanding, at any time on or after September 17, 2024 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series LL Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series LL Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 calendar days and not more than 60 calendar days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series LL Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series LL Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series LL Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series LL Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series LL Preferred Stock at the time outstanding, the shares of Series LL Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series LL Preferred Stock in proportion to the number of Series LL Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series LL Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from the Corporation or such bank or trust company at any time after the redemption date from the funds so set aside or deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount set aside or deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

**(a) General.** The holders of Series LL Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series LL Preferred Stock or any other class or series of preferred stock that ranks on parity with Series LL Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series LL Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series LL Preferred Stock and any other class or series of preferred stock that ranks on parity with Series LL Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series LL Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series LL Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series LL Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series LL Preferred Stock and any other class or series of preferred stock that ranks on parity with Series LL Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series LL Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series LL Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series LL Preferred Stock and any other class or series of preferred stock that ranks on parity with Series LL Preferred Stock as to payment of dividends, if any, for the equivalent of at least four quarterly Dividend Periods, then the right of the holders of Series LL Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series LL Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series LL Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the Series LL Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in



person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series LL Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series LL Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66⅔% of the shares of the Series LL Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series LL Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series LL Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series LL Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series LL Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series LL Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series LL Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series LL Preferred Stock, with proper notice and sufficient funds having been set aside or deposited for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series LL Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series LL Preferred Stock shall not have any rights of preemption or rights to convert such Series LL Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series LL Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series LL Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series LL Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series LL Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 1<sup>st</sup> day of September, 2019.

**BANK OF AMERICA CORPORATION**

By: /s/ ROSS E. JEFFRIES, JR.

Name: Ross E. Jeffries, Jr.

Title: Deputy General Counsel and Corporate Secretary

**CERTIFICATE OF DESIGNATIONS OF  
FIXED-TO-FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES MM  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on January 21, 2020, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors duly adopted on June 27, 2019, the provisions of the Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series MM” (the “*Series MM Preferred Stock*”). Each share of Series MM Preferred Stock shall be identical in all respects to every other share of Series MM Preferred Stock. Series MM Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series MM Preferred Stock shall be 44,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series MM Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series MM Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series MM Preferred Stock:

“*Benchmark*” means, initially, Three-Month LIBOR; provided that if a Benchmark Transition Event and related Benchmark Replacement Date have occurred with respect to Three-Month LIBOR or the then-current Benchmark, then “*Benchmark*” means the applicable Benchmark Replacement.

“*Benchmark Replacement*” means the Interpolated Benchmark with respect to the then-current Benchmark (if applicable), plus the Benchmark Replacement Adjustment for such Benchmark (if applicable); provided that if the Calculation Agent (after consultation with the Corporation) cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date, then “*Benchmark Replacement*” means the first alternative set forth in the order below that can be determined by the Corporation or the Corporation’s designee (after consultation with the Corporation) as of the Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the Benchmark Replacement Adjustment;
- (2) the sum of: (a) Compounded SOFR and (b) the Benchmark Replacement Adjustment;

- (3) the sum of: (a) the alternate rate that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor (if any) and (b) the Benchmark Replacement Adjustment;
- (4) the sum of: (a) the ISDA Fallback Rate and (b) the Benchmark Replacement Adjustment;
- (5) the sum of: (a) the alternate rate that has been selected by the Corporation or the Corporation's designee (after consultation with the Corporation) as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate as a replacement for the then-current Benchmark for U.S. dollar-denominated floating rate securities at such time and (b) the Benchmark Replacement Adjustment.

*"Benchmark Replacement Adjustment"* means the first alternative set forth in the order below that can be determined by the Corporation or the Corporation's designee (after consultation with the Corporation) as of the Benchmark Replacement Date:

- (1) the spread adjustment (which may be a positive or negative value or zero) that has been selected or recommended by the Relevant Governmental Body or determined by the Corporation or the Corporation's designee (after consultation with the Corporation) in accordance with the method for calculating or determining such spread adjustment that has been selected or recommended by the Relevant Governmental Body, in each case for the applicable Unadjusted Benchmark Replacement;
- (2) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment;
- (3) the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Corporation or the Corporation's designee (after consultation with the Corporation) giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated floating rate securities at such time.

*"Benchmark Replacement Conforming Changes"* means, with respect to any Benchmark Replacement, changes to (1) any Dividend Determination Date, Dividend Payment Date or Dividend Period, (2) the manner, timing and frequency of determining rates and amounts of dividends that are payable on the Series MM Preferred Stock and the conventions relating to such determination, (3) the timing of making dividend payments, (4) rounding conventions, (5) tenors and (6) any other terms or provisions of the Series MM Preferred Stock, in each case that the Corporation or the Corporation's designee (after consultation with the Corporation) determines, from time to time, to be appropriate to reflect the determination and implementation of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Corporation, the Calculation Agent or the Corporation's designee (after consultation with the Corporation) decides that implementation of any portion of such market practice is not administratively feasible or if the Corporation or the Corporation's designee (after consultation with the Corporation) determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Corporation or the Corporation's designee (after consultation with the Corporation) determines is appropriate).

*"Benchmark Replacement Date"* means the earliest to occur of the following events with respect to the then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
- (2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination.

“*Benchmark Transition Event*” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day, subject to change in accordance with Section 4(a) hereof in the event a Benchmark Transition Event and Benchmark Replacement Date have occurred.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity (which may be an affiliate of the Corporation) as may be appointed by the Corporation to act as calculation agent for the Series MM Preferred Stock during the Floating Rate Period.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series MM Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series MM Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series MM Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series MM Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series MM Preferred Stock is outstanding.

“*Compounded SOFR*” means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate being established by the Corporation or the Corporation’s designee (after consultation with the Corporation) in accordance with:

- (1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining Compounded SOFR; provided that:
- (2) if, and to the extent that, the Corporation or the Corporation’s designee (after consultation with the Corporation) determines that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by the Corporation or the Corporation’s designee (after consultation with the Corporation) giving due consideration to any industry-accepted market practice for U.S. dollar-denominated floating rate securities at such time.

“*Corresponding Tenor*” with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the then-current Benchmark.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of Three-Month LIBOR in Section 4(a) hereof.

“*Dividend Payment Date*” means, for the Fixed Rate Period, January 28 and July 28 of each year, and for the Floating Rate Period, January 28, April 28, July 28, and October 28 of each year, subject to adjustment for non-Business Days as described in Section 4(a) hereof.

“*Dividend Period*” means the period from, and including, the date of issuance of the Series MM Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date, subject to adjustment as described in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Federal Reserve Bank of New York’s Website*” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Interpolated Benchmark*” with respect to the Benchmark (if applicable) means the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor. “*Benchmark*” as used in clause (1) and (2) of the foregoing definition means the then-current Benchmark for the applicable periods specified in such clauses without giving effect to the applicable index maturity (if any).

“*ISDA Definitions*” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

“*ISDA Fallback Adjustment*” means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.

“*ISDA Fallback Rate*” means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series MM Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) Floating Rate Non-Cumulative Preferred Stock, Series E, (c) Floating Rate Non-Cumulative Preferred Stock, Series F, (d) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (e) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (f) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (h) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (i) 6.500% Non-Cumulative Preferred Stock, Series Y, (j) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (l) 6.200% Non-Cumulative Preferred Stock, Series CC, (m) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD, (n) 6.000% Non-Cumulative Preferred Stock, Series EE, (o) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series FF, (p) 6.000% Non-Cumulative Preferred Stock, Series GG, (q) 5.875% Non-Cumulative Preferred Stock, Series HH, (r) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series JJ, (s) 5.375% Non-Cumulative Preferred Stock, Series KK, (t) 5.000% Non-Cumulative Preferred Stock, Series LL, (u) Floating Rate Non-Cumulative Preferred Stock, Series 1, (v) Floating Rate Non-Cumulative Preferred Stock, Series 2, (w) Floating Rate Non-Cumulative Preferred Stock, Series 4, (x) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (y) any other class or series of stock of the

Corporation hereafter authorized that ranks on a par with the Series MM Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reference Time*” with respect to any determination of the Benchmark means (1) if the Benchmark is Three-Month LIBOR, 11:00 a.m. (London time) on the relevant Dividend Determination Date, and (2) if the Benchmark is not Three-Month LIBOR, the time determined by the Corporation or the Corporation’s designee (after consultation with the Corporation) in accordance with the Benchmark Replacement Conforming Changes.

“*Relevant Governmental Body*” means the Federal Reserve and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve and/or the Federal Reserve Bank of New York or any successor thereto.

“*Reuters Screen Page “LIBOR01”*” means the display on the Thomson Reuters Eikon service, or any successor or replacement service, on page LIBOR01, for the purpose of displaying London interbank offered rates of major banks for U.S. dollar deposits, or any successor or replacement page or pages on that service.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series MM Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series MM Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*SOFR*” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website, or any successor source.

“*Term SOFR*” means the forward-looking term rate for the applicable Corresponding Tenor based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“*Three-Month LIBOR*” shall have the meaning set forth in Section 4(a) hereof.

“*Unadjusted Benchmark Replacement*” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

#### **Section 4. Dividends.**

(a) **Rate.** Holders of Series MM Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series MM Preferred Stock, and no more, payable (x) for the Fixed Rate Period (as defined below), semi-annually in arrears on January 28 and July 28 of each year, beginning on July 28, 2020; provided, however, that if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), in each case, without any additional dividends accruing or other payment adjustment and the relevant Dividend Period will not be adjusted; and (y) for the Floating Rate Period (as defined below), quarterly in arrears on January 28, April 28, July 28 and October 28 of each year, beginning on April 28, 2025; provided, however, that if any such day is not a Business Day, then the next succeeding day that is a Business Day will be the Dividend Payment Date for the relevant Dividend Period (unless that day falls in the next calendar month, in which case the immediately preceding Business Day will be the Dividend Payment Date for the relevant Dividend Period), in each case, with dividends accruing to, but excluding, the actual payment date, and the relevant Dividend Period will be adjusted accordingly. Dividends on each share of Series MM Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 4.300%, for each Dividend Period from, and including, the issue date to, but excluding, January 28, 2025 (the “*Fixed Rate Period*”), and (2) thereafter, Three-Month LIBOR (as defined below) (which rate is subject to replacement as described below) plus a spread of 2.664%, for each Dividend Period from, and including, January 28, 2025 (the “*Floating Rate Period*”). If a Benchmark Transition Event and related Benchmark Replacement Date occur with respect to Three-Month LIBOR, then dividends on the Series MM Preferred Stock during the Floating Rate Period thereafter will be determined not by reference to Three-Month LIBOR but instead by reference to the Benchmark Replacement, and, in connection with the implementation of the applicable Benchmark Replacement, the Corporation or the Corporation’s designee (after consultation with the Corporation) may from time to time, on or after the Benchmark Replacement Date, make Benchmark Replacement Conforming Changes, and any such Benchmark

Replacement Conforming Changes will be deemed incorporated herein by reference and supersede and supplement the provisions of this Section 4(a) to the extent applicable.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the London interbank offered rate for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” at approximately 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If no such offered rate appears on Reuters Screen Page “LIBOR01” on the relevant Dividend Determination Date at approximately 11:00 a.m., London time, then the Corporation will select and identify to the Calculation Agent four major banks in the London interbank market, and the Calculation Agent will request each such bank to provide a quotation of the rate at which three-month deposits in U.S. dollars in amounts of at least \$1,000,000 commencing on the first day of the Dividend Period relating to such Dividend Determination Date are offered by it to prime banks in the London interbank market, at approximately 11:00 a.m. London time, on that Dividend Determination Date. If at least two quotations are provided, the Calculation Agent will determine Three-Month LIBOR as the arithmetic average (rounded upward if necessary to the nearest .00001%) of the quotations provided. If fewer than two quotations are provided, the Corporation will select and identify to the Calculation Agent three major banks in New York City, and the Calculation Agent will request each of such banks to provide a quotation of the rate offered by it at approximately 11:00 a.m., New York City time, on the Dividend Determination Date for loans in U.S. dollars to leading European banks for a three-month period for the applicable Dividend Period in an amount of at least \$1,000,000 commencing on the first day of the Dividend Period relating to such Dividend Determination Date. If three quotations are provided, the Calculation Agent will determine Three-Month LIBOR as the arithmetic average of the quotations provided. Otherwise, Three-Month LIBOR for the applicable Dividend Period will be equal to Three-Month LIBOR in effect for the then-current Dividend Period or, in the case of the first Dividend Period during the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period.

Notwithstanding the foregoing paragraph, if the Corporation or the Corporation’s designee (after consultation with the Corporation) determines on or prior to the relevant Reference Time that a Benchmark Transition Event and related Benchmark Replacement Date have occurred with respect to Three-Month LIBOR or the then-current Benchmark for the Series MM Preferred Stock, the applicable Benchmark Replacement will replace the then-current Benchmark for the Series MM Preferred Stock for all purposes relating to the Series MM Preferred Stock during the Floating Rate Period in respect of all determinations on such date and for all determinations on all subsequent dates. In connection with the implementation of a Benchmark Replacement, the Corporation or the Corporation’s designee (after consultation with the Corporation) may make Benchmark Replacement Conforming Changes from time to time. Any determination, decision or election that may be made by the Corporation or the Corporation’s designee (which may be an affiliate of the Corporation) pursuant to this paragraph (including Benchmark Replacement Conforming Changes) and definitions related thereto, and any decision to take or refrain from taking any action or any selection (i) will be conclusive and binding absent manifest error; (ii) if made by the Corporation, will be made in the sole discretion of the Corporation; (iii) if made by the Corporation’s designee, will be made after consultation with the Corporation, and the Corporation’s designee will not make any such determination, decision or election to which the Corporation objects; and (iv) shall be deemed incorporated herein by reference and be part of the terms of the Series MM Preferred Stock without consent from the holders of the Series MM Preferred Stock or any other party. The Corporation may designate an entity (which may be a calculation agent and/or the Corporation’s affiliate) to make any determination, decision or election that the Corporation has the right to make in connection with the foregoing paragraphs. For so long as any share of the Series MM Preferred Stock is outstanding, the Corporation will maintain a record of any Benchmark Replacement and Benchmark Replacement Conforming Changes, and will provide a copy of such record to holders of the Series MM Preferred Stock upon written request to the Corporation.

The record date for payment of dividends on the Series MM Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward. The Calculation Agent’s establishment of Three-Month LIBOR or the dividend rate determined based on the Benchmark Replacement, as applicable, and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series MM Preferred Stock upon written request and will be final and binding in the absence of manifest error.



**(b) Non-Cumulative Dividends.** Dividends on shares of Series MM Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series MM Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series MM Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series MM Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series MM Preferred Stock remains outstanding, (i) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series MM Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series MM Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series MM Preferred Stock remain outstanding, no dividends shall be declared and paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series MM Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series MM Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series MM Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series MM Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series MM Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series MM Preferred Stock shall not be entitled to participate in any such dividend.

## **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series MM Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series MM Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series MM Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series MM Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series MM Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series MM Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series MM Preferred Stock and all holders of any Parity Stock, the

holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

## **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series MM Preferred Stock at the time outstanding, at any time on or after January 28, 2025 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series MM Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series MM Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 calendar days and not more than 60 calendar days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series MM Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series MM Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series MM Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series MM Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series MM Preferred Stock at the time outstanding, the shares of Series MM Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series MM Preferred Stock in proportion to the number of Series MM Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series MM Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from the Corporation or such bank or trust company at any time after the redemption date from the funds so set aside or deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to

the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount set aside or deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

(a) **General.** The holders of Series MM Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

(b) **Special Voting Right.**

(i) **Voting Right.** If and whenever dividends on the Series MM Preferred Stock or any other class or series of preferred stock that ranks on parity with Series MM Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series MM Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series MM Preferred Stock and any other class or series of preferred stock that ranks on parity with Series MM Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

(ii) **Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series MM Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series MM Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series MM Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series MM Preferred Stock and any other class or series of preferred stock that ranks on parity with Series MM Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

(iii) **Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series MM Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series MM Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

(iv) **Termination; Removal.** Whenever full dividends have been paid regularly on the Series MM Preferred Stock and any other class or series of preferred stock that ranks on parity with Series MM Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series MM Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series MM Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

(c) **Other Voting Rights.** So long as any shares of the Series MM Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66⅔% of the voting power of the Series MM Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series MM Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series MM Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66⅔% of the shares of the Series MM Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series MM Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series MM Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series MM Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series MM Preferred Stock, shall not be deemed to adversely affect the powers, preferences or special rights of the Series MM Preferred Stock.

(d) **No Vote if Shares Redeemed.** No vote or consent of the holders of the Series MM Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series MM Preferred Stock, with proper notice and sufficient funds having been set aside or deposited for such redemption, in each case pursuant to Section 6 above.

(e) **Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series MM Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series MM Preferred Stock shall not have any rights of preemption or rights to convert such Series MM Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series MM Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series MM Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series MM Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series MM Preferred Stock are not subject to the operation of a sinking fund.  
[Signature Page Follows]

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 24<sup>th</sup> day of January, 2020.

**BANK OF AMERICA CORPORATION**

By: /s/ROSS E JEFFRIES, JR.  
Name: Ross E. Jeffries, Jr.  
Title: Deputy General Counsel and Corporate Secretary

**CERTIFICATE OF DESIGNATIONS OF  
4.375% NON-CUMULATIVE PREFERRED STOCK, SERIES NN  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on October 27, 2020, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors duly adopted on June 23, 2020, the provisions of the Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “4.375% Non-Cumulative Preferred Stock, Series NN” (the “*Series NN Preferred Stock*”). Each share of Series NN Preferred Stock shall be identical in all respects to every other share of Series NN Preferred Stock. Series NN Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series NN Preferred Stock shall be 44,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series NN Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series NN Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series NN Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series NN Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series NN Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series NN Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series NN Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series NN Preferred Stock is outstanding.

“*Depositary Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” means February 3, May 3, August 3 and November 3 of each year, beginning on February 3, 2021.

“*Dividend Period*” means the period from, and including, the date of issuance of the Series NN Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series NN Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) Floating Rate Non-Cumulative Preferred Stock, Series E, (c) Floating Rate Non-Cumulative Preferred Stock, Series F, (d) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (e) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (f) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (h) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (j) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series AA, (k) 6.200% Non-Cumulative Preferred Stock, Series CC, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series DD, (m) 6.000% Non-Cumulative Preferred Stock, Series EE, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series FF, (o) 6.000% Non-Cumulative Preferred Stock, Series GG, (p) 5.875% Non-Cumulative Preferred Stock, Series HH, (q) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series JJ, (r) 5.375% Non-Cumulative Preferred Stock, Series KK, (s) 5.000% Non-Cumulative Preferred Stock, Series LL, (t) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series MM, (u) Floating Rate Non-Cumulative Preferred Stock, Series 1, (v) Floating Rate Non-Cumulative Preferred Stock, Series 2, (w) Floating Rate Non-Cumulative Preferred Stock, Series 4, (x) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (y) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series NN Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series NN Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series NN Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series NN Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series NN Preferred Stock, and no more, payable quarterly in arrears on February 3, May 3, August 3 and November 3 of each year, beginning on February 3, 2021; provided, however, that if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), in each case, without any additional dividends accruing or other payment adjustment and the relevant Dividend Period will not be adjusted. Dividends on each share of Series NN Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to 4.375%. The record date for payment of dividends on the Series NN Preferred Stock shall be the fifteenth day of the calendar month preceding the month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 calendar days prior to such Dividend Payment Date. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series NN Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series NN Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series NN Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series NN Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series NN Preferred Stock remains outstanding, (i) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro*



*rata* portion, of the Series NN Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series NN Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series NN Preferred Stock remain outstanding, no dividends shall be declared and paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series NN Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series NN Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series NN Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series NN Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series NN Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series NN Preferred Stock shall not be entitled to participate in any such dividend.

## **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series NN Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series NN Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series NN Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series NN Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series NN Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series NN Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series NN Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

## **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series NN Preferred Stock at the time outstanding, at any time on or after November 3, 2025 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series NN Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any

declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series NN Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 calendar days and not more than 60 calendar days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series NN Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series NN Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series NN Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series NN Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series NN Preferred Stock at the time outstanding, the shares of Series NN Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series NN Preferred Stock in proportion to the number of Series NN Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series NN Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from the Corporation or such bank or trust company at any time after the redemption date from the funds so set aside or deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount set aside or deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

## **Section 7. Voting Rights.**

**(a) General.** The holders of Series NN Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series NN Preferred Stock or any other class or series of preferred stock that ranks on parity with Series NN Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series NN Preferred Stock (together with holders of any class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not

cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series NN Preferred Stock and any other class or series of preferred stock that ranks on parity with Series NN Preferred Stock as to payment of dividends having equivalent voting rights is a "Preferred Director."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series NN Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series NN Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series NN Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series NN Preferred Stock and any other class or series of preferred stock that ranks on parity with Series NN Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series NN Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series NN Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series NN Preferred Stock and any other class or series of preferred stock that ranks on parity with Series NN Preferred Stock as to payment of dividends, if any, for the equivalent of at least four quarterly Dividend Periods, then the right of the holders of Series NN Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series NN Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series NN Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66⅔% of the voting power of the Series NN Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series NN Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series NN Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66⅔% of the shares of the Series NN Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series NN Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series NN Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with

or into another entity in which the shares of the Series NN Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series NN Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series NN Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series NN Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series NN Preferred Stock, with proper notice and sufficient funds having been set aside or deposited for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series NN Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series NN Preferred Stock shall not have any rights of preemption or rights to convert such Series NN Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series NN Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series NN Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series NN Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series NN Preferred Stock are not subject to the operation of a sinking fund.

[Signature Page Follows]

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 29<sup>th</sup> day of October, 2020.

**BANK OF AMERICA CORPORATION**

By: /s/ROSS E JEFFRIES, JR.  
Name: Ross E. Jeffries, Jr.  
Title: Deputy General Counsel and Corporate Secretary

# Bank of America Corporation

## BYLAWS OF BANK OF AMERICA CORPORATION

As Amended and Restated by the Board of Directors  
on September 23, 2020

---

## **TABLE OF CONTENTS**

ARTICLE I	Definitions	1
Section 1.	Definitions	1
Section 2.	Cross-Reference to the DGCL	3
ARTICLE II	Offices	3
Section 1.	Principal Place of Business	3
Section 2.	Registered Office	3
Section 3.	Other Offices	3
ARTICLE III	Stockholders	4
Section 1.	Annual Meeting	4
Section 2.	Special Meetings	4
Section 3.	Place of Meeting	7
Section 4.	Notice to Stockholders	7
Section 5.	Fixing of Record Date	8
Section 6.	Stockholder List	9
Section 7.	Quorum	9
Section 8.	Proxies	9
Section 9.	Voting of Shares	10
Section 10.	Required Vote for Directors	10
Section 11.	Conduct of Meetings	11
Section 12.	Notice of Stockholder Business and Nominations	11
Section 13.	Inspectors of Election	16
ARTICLE IV	Board of Directors	17
Section 1.	General Powers	17
Section 2.	Number and Qualifications	17
Section 3.	Terms of Directors	17
Section 4.	Vacancies and Newly Created Directorships	17
Section 5.	Compensation	17
Section 6.	Committees	17
Section 7.	Chairman of the Board	18
Section 8.	Lead Independent Director	18
Section 9.	Inclusion of Director Nominations By Stockholders in the Corporation's Proxy Materials	18
ARTICLE V	Meetings of Directors	25
Section 1.	Regular Meetings	25
Section 2.	Special Meetings	25
Section 3.	Notice	25
Section 4.	Waiver of Notice	26
Section 5.	Quorum	26
Section 6.	Manner of Acting	26
Section 7.	Conduct of Meetings	26
Section 8.	Action Without a Meeting	26
Section 9.	Participation Other Than In Person	27

ARTICLE VI	Officers	27
Section 1.	Officers of the Corporation	27
Section 2.	Appointment and Term	27
Section 3.	Compensation	27
Section 4.	Resignation and Removal of Officers	27
Section 5.	Contract Rights of Officers	28
Section 6.	Chief Executive Officer	28
Section 7.	President	28
Section 8.	Secretary	28
Section 9.	Treasurer	28
ARTICLE VII	Shares and Their Transfer	29
Section 1.	Shares	29
Section 2.	Stock Transfer Books and Transfer of Shares	29
Section 3.	Lost Certificates	29
Section 4.	Transfer Agent and Register; Regulations	30
ARTICLE VIII	Indemnification	30
Section 1.	Right to Indemnification	30
Section 2.	Right to Advancement of Expenses	31
Section 3.	Right of Indemnatee to Bring Suit	31
Section 4.	Non-Exclusivity of Rights	31
Section 5.	Insurance	32
Section 6.	Indemnification of Agents of the Corporation	32
Section 7.	Limitations on Indemnification	32
Section 8.	Severability	32
ARTICLE IX	General Provisions	32
Section 1.	Execution of Instruments	32
Section 2.	Voting of Ownership Interests	33
Section 3.	Distributions	33
Section 4.	Seal and Attestation	33
Section 5.	Amendments	33
ARTICLE X	Emergency Bylaws	33
Section 1.	Emergency Bylaws	33
Section 2.	Meetings	34
Section 3.	Quorum	34
Section 4.	Amendments	34
Section 5.	Contingency Plan	34
Section 6.	Liability	34
Section 7.	Repeal or Change	34



## BYLAWS OF BANK OF AMERICA CORPORATION

### ARTICLE I DEFINITIONS

Section 1. Definitions. In these Bylaws, unless otherwise specifically provided:

- (a) “Advancement of Expenses” has the meaning set forth in Section 2 of Article VIII of these Bylaws.
- (b) “Affiliate” means any corporation, partnership, limited liability company, association, trust or other entity or organization that is Controlled By the Corporation.
- (c) “Certificate of Incorporation” means the Certificate of Incorporation of the Corporation, as amended and restated from time to time, including any certificates of designation filed with the Delaware Secretary of State setting forth the terms of preferred stock of the Company.
- (d) “Chief Audit Executive” has the meaning set forth in Section 1 of Article VI of these Bylaws.
- (e) “Common Stock” means the common stock of the Corporation.
- (f) “Controlled By” means possession, directly or indirectly, of the power to direct or cause the direction and management of the policies of an entity, whether through the ownership of over fifty (50) percent of the voting securities or other ownership interest, by contract or otherwise.
- (g) “Corporation” means Bank of America Corporation, a Delaware corporation, and any successor thereto.
- (h) “Delivery Date” has the meaning set forth in Section 2(c) of Article III of these Bylaws.
- (i) “Designated Officers” has the meaning set forth in Section 2 of Article X of these Bylaws.
- (j) “DGCL” means the General Corporation Law of the State of Delaware, as the same now exists or may hereafter be amended.
- (k) “Eligible Stockholder” has the meaning set forth in Section 9(a) of Article IV of these Bylaws.
- (l) “Emergency” has the meaning set forth in Section 1 of Article X of these Bylaws.

- (m) “Exchange Act” means the Securities Exchange Act of 1934, as amended.
- (n) “Executive Officer” has the meaning set forth in Section 1 of Article VI of these Bylaws.
- (o) “Federal Reserve Board” has the meaning set forth in Section 9(i) of Article IV of these Bylaws.
- (p) “Final Adjudication” has the meaning set forth in Section 2 of Article VIII of these Bylaws.
- (q) “Final Proxy Access Nomination Date” has the meaning set forth in Section 9(b) of Article IV of these Bylaws.
- (r) “Indemnitee” has the meaning set forth in Section 1 of Article VIII of these Bylaws.
- (s) “Lead Independent Director” means the independent director appointed by the independent members of the Board of Directors in accordance with Article IV, Section 8 of these Bylaws.
- (t) “Meeting Record Date” has the meaning set forth in Section 2(d) of Article III of these Bylaws.
- (u) “Notice of Proxy Access Nomination” has the meaning set forth in Section 9(b) of Article IV of these Bylaws.
- (v) “NYSE” has the meaning set forth in Section 9 of Article III of these Bylaws.
- (w) “Officer” has the meaning set forth in Section 1 of Article VI of these Bylaws.
- (x) “OCC” has the meaning set forth in Section 9(i) of Article IV of these Bylaws.
- (y) “Permitted Number” has the meaning set forth in Section 9(d) of Article IV of these Bylaws.
- (z) “Proceeding” has the meaning set forth in Section 1 of Article VIII of these Bylaws.
- (aa) “Qualifying Fund” has the meaning set forth in Section 9(e) of Article IV of these Bylaws.
- (bb) “Required Shares” has the meaning set forth in Section 9(e) of Article IV of these Bylaws.
- (cc) “Requisite Percent” has the meaning set forth in Section 2(a)(i) of Article III of these Bylaws.

- (dd) "Shares" means the Common Stock and other units into which the equity interests in the Corporation are divided.
- (ee) "Similar Item" has the meaning set forth in Section 2(c) of Article III of these Bylaws.
- (ff) "Special Meeting Request" has the meaning set forth in Section 2(a)(i) of Article III of these Bylaws.
- (gg) "Statement" has the meaning set forth in Section 9(h) of Article IV of these Bylaws.
- (hh) "Stockholder" means the person in whose name Shares are registered in the records of the Corporation.
- (ii) "Stockholder Nominee" has the meaning set forth in Section 9(a) of Article IV of these Bylaws.
- (jj) "Stockholder Requested Special Meeting" has the meaning set forth in Section 2(a)(i) of Article III of these Bylaws.
- (kk) "Stockholder Special Meeting Request" has the meaning set forth in Section 2(b) of Article III of these Bylaws.
- (ll) "Undertaking" has the meaning set forth in Section 2 of Article VIII of these Bylaws.

Section 2. Cross-Reference to the DGCL If any term used in these Bylaws and not otherwise defined herein is defined for purposes of the DGCL, such definition shall apply for purposes of these Bylaws, unless the context shall clearly require otherwise.

## **ARTICLE II**

### **OFFICES**

Section 1. Principal Place of Business The principal place of business of the Corporation shall be located in the City of Charlotte, County of Mecklenburg, State of North Carolina.

Section 2. Registered Office. The registered office of the Corporation required by the DGCL to be maintained in the State of Delaware is The Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware, 19801. The name of the corporation's registered agent at such address is The Corporation Trust Company.

Section 3. Other Offices. The Corporation may have offices at such other places, either within or without the State of Delaware, as the Board of Directors may from time to time determine or as the affairs of the Corporation may require from time to time.

## ARTICLE III

### STOCKHOLDERS

Section 1. Annual Meeting. The annual meeting of the Stockholders shall be held each year at a date and hour fixed from time to time by resolution of the Board of Directors for the purpose of electing directors and for the transaction of such other proper business as may come before the meeting. The Board of Directors may postpone, reschedule or cancel any annual meeting of Stockholders previously scheduled by the Board of Directors.

Section 2. Special Meetings.

(a) General.

- (i) Special meetings of the Stockholders, for any purpose or purposes, unless otherwise prescribed by the DGCL, may be called by the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President, or by the Secretary acting under instructions of the Board of Directors, the Chairman of the Board, the Chief Executive Officer, or the President, subject to any applicable law or regulation (each, a "Special Meeting Request"). A special meeting of Stockholders shall be called by the Secretary upon the written request of record holders representing ownership of at least ten (10) percent of the outstanding Common Stock of the Corporation (the "Requisite Percent"), subject to Subsection (b) of this Section 2 (a "Stockholder Requested Special Meeting"). Business transacted at any special meeting of Stockholders shall be limited to the purposes stated in the notice. The Board of Directors may postpone, reschedule or cancel any special meeting of the Stockholders previously scheduled by the Board of Directors.
- (ii) For purposes of calculating the Requisite Percent, "ownership" shall be deemed to consist of and include only the outstanding Common Stock as to which a person possesses both (A) the full voting rights pertaining to the Common Stock and (B) the full economic interest in (including the opportunity for profit and risk of loss on) such Common Stock; provided that the ownership of Common Stock calculated in accordance with clauses (A) and (B) shall not include any Common Stock (x) that a person has sold in any transaction that has not been settled or closed, (y) that a person has borrowed or purchased pursuant to an agreement to resell or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by a person, whether any such instrument or agreement is to be settled with Common Stock or with cash based on the notional amount or value of Common Stock, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent

or at any time in the future, the person's full right to vote or direct the voting of any such Common Stock, and/or (2) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such person's Common Stock. "Ownership" shall include Common Stock held in the name of a nominee or other intermediary so long as the person claiming ownership of such Common Stock retains the right to instruct how the Common Stock is voted with respect to the election of directors and possesses the full economic interest in the Common Stock, provided that this provision shall not alter the obligations of any Stockholder to provide the notice described in Subsection (b) of this Section 2. Ownership of Common Stock shall be deemed to continue during any period in which Common Stock has been loaned if the person claiming ownership may terminate the Common Stock lending within three (3) days and during any period in which any voting power has been delegated by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time without condition. The determination of the extent of "ownership" of Common Stock for purposes of this Section 2 shall be made in good faith by the Board of Directors, which determination shall be conclusive and binding on the Corporation and the Stockholders. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings.

(b) Stockholder Requested Special Meetings. In order for a Stockholder Requested Special Meeting to be called, one or more requests for a special meeting (each, a "Stockholder Special Meeting Request," and collectively, the "Stockholder Special Meeting Requests") must be signed by the Requisite Percent of record holders (or their duly authorized agents) and must be delivered to the Secretary. The Stockholder Special Meeting Request(s) shall be delivered to the Secretary at the principal executive offices of the Corporation by registered mail, return receipt requested. Each Stockholder Special Meeting Request shall (i) set forth a statement of the specific purpose(s) of the meeting and the matters proposed to be acted on at it, (ii) bear the date of signature of each such Stockholder (or duly authorized agent) signing the Stockholder Special Meeting Request, (iii) set forth (A) the name and address of each Stockholder signing such request and of any beneficial owner on whose behalf the Stockholder Special Meeting Request is signed, (B) the amount of Common Stock owned of record and beneficially by each such Stockholder and (C) include documentary evidence of such Stockholder's record and beneficial ownership of such Common Stock, (iv) set forth all information relating to each such Stockholder that must be disclosed with respect to persons involved in solicitations of proxies for election of directors in an election contest (even if the Stockholder Requested Special Meeting does not involve an election contest), or is otherwise required, in each case, pursuant to Regulation 14A under the Exchange Act, (v) contain the information required by Article III, Section 12 of these Bylaws as to each such Stockholder and any beneficial owners on whose behalf the Stockholder Special Meeting Request is signed and (vi) set forth an acknowledgment by each such Stockholder that the Stockholder Special Meeting Request shall be deemed to be revoked (and any meeting scheduled in response may be canceled) if the Common Stock owned by such persons does not represent ownership of at least the Requisite Percent at all times between the date on which such Stockholder Special

Meeting Request is delivered and the date of the applicable Stockholder Requested Special Meeting, as well as an agreement by each such Stockholder to notify the Corporation immediately if he, she or it ceases to own any Common Stock. Any requesting Stockholder may revoke a Stockholder Special Meeting Request at any time by written revocation delivered to the Secretary at the principal executive offices of the Corporation; provided, however, that if following such revocation there are Stockholder Special Meeting Requests which have not been revoked from Stockholders holding in the aggregate less than the Requisite Percent, the Board of Directors, in its discretion, may cancel the Stockholder Requested Special Meeting. If none of the Stockholders who submitted a Stockholder Special Meeting Request for a Stockholder Requested Special Meeting appears or sends a qualified representative to present the nominations proposed to be presented or other business proposed to be conducted at the Stockholder Requested Special Meeting, the Corporation need not present such nominations or other business for a vote at such Stockholder Requested Special Meeting.

In determining whether a Stockholder Requested Special Meeting has been requested by the record holders of Common Stock representing in the aggregate not less than the Requisite Percent as of the date of such written request to the Secretary, multiple Stockholder Special Meeting Requests delivered to the Secretary will be considered together only if (i) each request identifies substantially the same purpose or purposes of the proposed Stockholder Requested Special Meeting and substantially the same matters proposed to be acted on at the proposed Stockholder Requested Special Meeting (in each case to be determined by the Board of Directors), and (ii) such Stockholder Special Meeting Requests have been dated and delivered to the Secretary within sixty (60) days of the earliest dated Stockholder Special Meeting Request.

(c) Calling of a Special Meeting. The Secretary shall not be required to call a special meeting of Stockholders if (i) the Board of Directors calls an annual or special meeting of Stockholders to be held not later than sixty (60) days after the date on which a valid Special Meeting Request, Stockholder Special Meeting Request or multiple Stockholder Special Meeting Requests constituting at least the Requisite Percent have been delivered to the Secretary (the "Delivery Date"); or (ii) the Special Meeting Request or the Stockholder Special Meeting Request (A) is received by the Secretary during the period commencing seventy-five (75) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (B) contains an identical or substantially similar item (a "Similar Item") to an item that was presented at any meeting of Stockholders held within one hundred and twenty (120) days prior to the Delivery Date (and, for purposes of this clause (B) the election of directors shall be deemed a "Similar Item" with respect to all items of business involving the election or removal of directors); (C) relates to an item of business that is not a proper subject for action by the party requesting the special meeting under applicable law; (D) was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law; or (E) does not comply with the provisions of this Section 2. The Secretary may call a special meeting of Stockholders at any time as requested by any government or regulatory agency.

(d) Holding a Special Meeting. Except as provided in the next sentence, any special meeting shall be held at such date, time and place, within or without the State of Delaware, as may be fixed by the Board of Directors in accordance with these Bylaws and the DGCL. In the

case of a Stockholder Requested Special Meeting, such meeting shall be held at such date, time and place as may be fixed by the Board of Directors; provided, however, that the date of any Stockholder Requested Special Meeting shall be not less than ten (10) days nor more than sixty (60) days after the record date for such meeting (the "Meeting Record Date"), which shall be fixed in accordance with Article III, Section 5 of these Bylaws; provided further that, if the Board of Directors fails to designate, within ten (10) days after the Delivery Date, a date and time for a Stockholder Requested Special Meeting, then such meeting shall be held at 9:00 a.m. local time on the sixtieth (60<sup>th</sup>) day after the Meeting Record Date (or, if that day shall not be a business day, then on the next preceding business day); and provided further that in the event that the Board of Directors fails to designate a place for a Stockholder Requested Special Meeting within ten (10) days after the Meeting Record Date, then such meeting shall be held at the Corporation's principal executive offices. In fixing a date and time for any Stockholder Requested Special Meeting the Board of Directors may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting.

(e) **Business Transacted at a Special Meeting.** Business to be transacted at a special meeting may only be brought before the meeting pursuant to the Corporation's notice of meeting. Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose(s) stated in the Stockholder Special Meeting Request(s); provided, however, that nothing herein shall prohibit the Board of Directors from submitting matters to the Stockholders at any Stockholder Requested Special Meeting.

Section 3. **Place of Meeting.** The Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President of the Corporation, or the Secretary acting under instructions of the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President, may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting of Stockholders or for any special meeting of Stockholders or may, in its sole discretion determine that a meeting of Stockholders shall in addition or instead be held by means of remote communication in accordance with Section 211(a)(2) of the DGCL.

Section 4. **Notice to Stockholders.** Except as otherwise provided herein or required by law, whenever Stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which the Stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Any notice to Stockholders shall be effective if given by a form of electronic transmission in the manner and to the extent permitted by the DGCL.

Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each Stockholder entitled to vote at such meeting. Notwithstanding the foregoing, notice may be given to Stockholders sharing an address in the manner and to the

extent permitted by the DGCL and by the “householding” rules set forth in Rule 14a-3(e) under the Exchange Act. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the Stockholder at such Stockholder’s address as it appears on the records of the Corporation.

Any meeting of Stockholders, annual or special, may adjourn from time to time to reconvene at the same or another place. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the date, time and place, if any, of the adjourned meeting and the means of remote communications, if any, by which the Stockholders and proxyholders may be deemed to be present in person and voting at such meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each Stockholder entitled to vote at the meeting. If after the adjournment a new record date for determining Stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice in accordance with Section 5 of these Bylaws and notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

A Stockholder may waive any notice required by the DGCL, the Certificate of Incorporation or these Bylaws before or after the date and time stated in the notice. Attendance of a Stockholder at a meeting shall constitute a waiver of notice of such meeting, except when the Stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 5. Fixing of Record Date. For the purpose of determining Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, or Stockholders entitled to receive payment of any dividend or other distribution, or in order to make a determination of Stockholders for any other proper purpose, the Board of Directors may fix in advance a date for any such determination of Stockholders, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which date in any case shall not be more than 60 days and, in case of a meeting of Stockholders, not less than ten days, prior to the date of such meeting or on which such action is to be taken. If no record date is fixed for the determination of Stockholders entitled to notice of or to vote at a meeting of Stockholders, the close of business on the day before the first notice is given, or if notice is waived, the close of business on the day before the date of such meeting shall be the record date. If no record date is fixed for the determination of Stockholders entitled to receive payment of a dividend or other distribution or any other proper purpose, the close of business on the day on which the Board of Directors adopts the resolution relating thereto shall be the record date. When a determination of Stockholders entitled to vote at any meeting of Stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof or any postponement that is to a date not more than sixty (60) days after the record date, in each case unless the Board of Directors fixes a new record date.



Section 6. Stockholders List. The Corporation shall prepare, at least ten (10) days before the meeting of Stockholders, a complete list of the Stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each Stockholder and the number of Shares registered in the name of each Stockholder. The list of Stockholders shall be open to the examination of any Stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting during ordinary business hours, at the principal place of business of the Corporation, or the Corporation may place the Stockholder's list on a reasonably accessible electronic network as permitted by the DGCL. If the meeting is held in person, the list shall be produced and kept at the time and place of the meeting and be available for inspection by any Stockholder who is present at the meeting. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any Stockholder for the duration of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the Stockholders entitled to examine the list of Stockholders required by this Section 6 or to vote in person or by proxy at any meeting of Stockholders.

Section 7. Quorum. Except as otherwise required by law, a majority of the voting power of the outstanding Shares entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum at a meeting of Stockholders. Where a separate vote by a class or series or classes or series is required, a majority of the votes entitled to be cast by the outstanding Shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. In the absence of a quorum, such meeting may be adjourned from time to time by the chairman of the meeting or upon the approval of the majority of the voting power of the outstanding Shares present and entitled to vote at the meeting, even if less than a quorum, without notice other than announcement at the meeting as provided in Article III, Section 4 or as otherwise required by Article III. Once a quorum is present at a meeting, it is deemed present for the remainder of the meeting and for any adjournment of that meeting, notwithstanding the withdrawal of enough Stockholders to leave less than a quorum.

Section 8. Proxies. Each Stockholder entitled to vote at a meeting of Stockholders or to express consent or dissent to corporate action without a meeting may authorize another person or persons to act for such Stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

Without limiting the manner in which a Stockholder may authorize another person or persons to act for such Stockholder as proxy pursuant to the previous paragraph, the following shall constitute a valid means by which a Stockholder may grant such authority:

- (1) A Stockholder, or such Stockholder's authorized officer, director, employee or agent, may execute a document authorizing another person or persons to act for such Stockholder as proxy.

(2) A Stockholder may authorize another person or persons to act for such Stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such transmission must either set forth or be submitted with information from which it can be determined that the transmission was authorized by the Stockholder. If it is determined that such transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(3) The authorization of a person to act as a proxy may be documented, signed and delivered in accordance with the DGCL, provided that such authorization shall set forth, or be delivered with information enabling the Corporation to determine, the identity of the Stockholder granting such authorization.

Any copy, facsimile telecommunication or other reliable reproduction of the document (including electronic transmission) created pursuant to the previous paragraph of this section may be substituted or used in lieu of the original document for any and all purposes for which the original document could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original document.

A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

A Stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a revocation of the proxy or a new proxy bearing a later date.

**Section 9. Voting of Shares.** Except as otherwise provided by the Certificate of Incorporation, each outstanding share of Common Stock is entitled to one vote on each matter voted on at a Stockholders meeting. Other Shares are entitled to vote only as provided in the Certificate of Incorporation or the DGCL. If a quorum exists, action on a matter (other than election of directors or the chairman of a meeting) is approved if the votes cast favoring an action exceed the votes cast opposing the action; provided, however, if the Certificate of Incorporation, these Bylaws, the DGCL, the rules or regulations of the New York Stock Exchange ("NYSE") (unless the Corporation's common stock ceases to be listed on the NYSE and is listed on another exchange in which case such exchange's rules and regulations), or any law or regulation applicable to the Corporation or the action to be voted on requires a greater number of affirmative votes for approval of such matter, then action on such matter is approved if such greater number of votes favoring such action are cast.

**Section 10. Required Vote for Directors.** A nominee for director shall be elected to the Board of Directors if the votes cast for such nominee's election exceed the votes cast against such nominee's election; provided, however, that the directors shall be elected by a plurality of the

votes cast at any meeting of Stockholders for which (i) the Secretary receives a notice that a Stockholder has nominated a person for election to the Board of Directors in compliance with the advance notice requirements for Stockholder nominees for director set forth in Article III, Section 12 of these Bylaws and (ii) such nomination has not been withdrawn by such Stockholder on or prior to the tenth day preceding the date the Corporation first mails its notice of meeting for such meeting to the Stockholders. If no nominees for election to the Board of Directors are elected at an annual meeting, a special meeting of Stockholders shall be called for an election of directors in the manner provided in Article III, Section 2 of these Bylaws.

Section 11. Conduct of Meetings. The Chairman of the Board shall preside as chairman at each meeting of Stockholders or, in the Chairman of the Board's absence, the Chief Executive Officer or President shall so preside. At the request of the Chairman of the Board or the Chief Executive Officer or President, or in the event all are absent, such other Officer as the Board of Directors shall designate shall so preside at any such meeting. In the absence of a presiding officer determined in accordance with the preceding sentence, any person may be designated to so preside at a Stockholders meeting by a plurality vote of the Shares represented and entitled to vote at the meeting. The Secretary or, in the absence or at the request of the Secretary, any person designated by the person presiding at a Stockholders meeting shall act as secretary of such meeting. The chairman of the meeting shall have the authority to adopt and enforce such rules or regulations for the conduct of meetings of Stockholders and the safety of those in attendance as deemed necessary, appropriate or convenient, including, without limitation, establishing: (a) an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on participation in the meeting to Stockholders entitled to vote at the meeting, their duly authorized and constituted proxies and such other persons as the chairman of the meeting shall permit; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; (e) limitations on the time allotted for consideration of each agenda item and for questions and discussion by participants; and (f) procedures requiring attendees to provide the Corporation advance notice of their intent to attend the meeting. The chairman of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if the chairman should so determine, such chairman shall so declare to the meeting that any such matter or business not properly brought before the meeting shall not be transacted or considered. The chairman of the meeting may, for any reason, from time to time, adjourn any meeting of Stockholders, or recess any meeting of Stockholders, without notice other than announcement at the meeting except as provided in Article III, Section 4. The date and time of the opening and closing of the polls for each matter upon which the Stockholders will vote at the meeting shall be announced at the meeting.

Section 12. Notice of Stockholder Business and Nominations.

(a) At any meeting of the Stockholders, only nominations for the election of directors and the proposal of other business to be considered that has been properly brought before the meeting in accordance with the procedures set forth in this Section 12 may be conducted. Nominations for the election of directors and the proposal of other business at an annual

meeting may be made only: (i) by or at the direction of the Board of Directors or any committee thereof; (ii) by a Stockholder of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in this Section 12 is delivered to the Secretary, who is entitled to vote at the meeting and who complies with this Section 12; or (iii) by an Eligible Stockholder (as defined in Article IV, Section 9 of these Bylaws) who complies with the requirements of Article IV, Section 9 of these Bylaws.

(b) For nominations or other business to be properly brought before an annual meeting by a Stockholder pursuant to clause (ii) of Subsection (a) of this Section 12, the Stockholder must have given timely and proper notice thereof in writing to the Secretary and any such proposed business other than the nominations of persons for election to the Board of Directors must constitute a proper matter for stockholder action. To be timely, a Stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the seventy-fifth (75th) day, nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after its anniversary date, notice by the Stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the seventy-fifth (75th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a Stockholder's notice as described above. The number of persons a Stockholder may nominate for election as a director at the annual meeting (or in the case of a Stockholder giving the notice on behalf of a beneficial owner, the number of persons a Stockholder may nominate for election as a director at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting.

(c) To be proper, the notice by a Stockholder must set forth:

- (i) the name and address of the Stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the nomination is made or the business is proposed;
- (ii) a representation that the Stockholder is a holder of record of the Corporation's stock (including the number and class of Shares which are owned of record by such Stockholder as of the date of the notice), entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to make such nomination or to propose such business;
- (iii) as to the Stockholder giving the notice or, if the notice is given on behalf of a beneficial owner, as to such beneficial owner, and if such Stockholder or beneficial owner is an entity, as to each director, executive officer, managing

member or control person of such entity (any such person, a “control person”):

- (A) the number and class of Shares which are beneficially owned by such Stockholder or beneficial owner and by any control person as of the date of the notice, and a representation that the Stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of the class and number of Shares beneficially owned by the Stockholder or such beneficial owners and by any control person as of the record date for the meeting. For purposes of this Subsection (A), Shares shall be treated as “beneficially owned” by a person if the person beneficially owns such Shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (1) the right to acquire such Shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (2) the right to vote such Shares, alone or in concert with others, (3) investment power with respect to such Shares, including the power to dispose of, or to direct the disposition of, such Shares, and/or (4) a direct or indirect pecuniary interest in such Shares, as determined pursuant to Rule 16a-1(a)(2) under the Exchange Act, or other direct or indirect financial interest in Shares, regardless of whether exempt from the definition of pecuniary interest;
- (B) whether and the extent to which any hedging or other transaction or series of transactions has been entered into as of the date of the notice by or on behalf of, or any other agreement, arrangement or understanding (including any derivative or short positions, profit interests, options or any borrowing or lending of Shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of stock price changes for, or to increase or decrease the voting power of, such Stockholder or any such beneficial owner with respect to any Shares, and a representation that the Stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of any such hedging or other transaction or series of transactions in effect as of the record date for the meeting;
- (C) a representation whether the Stockholder or the beneficial owner, if any, and any control person (1) will engage in a solicitation with respect to the nomination or business proposed and, if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation and (2) with respect to any proposal other than a nomination for the election of directors, whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation’s outstanding capital stock required to approve or adopt the business to be proposed (in person or by proxy) by the Stockholders;

(D) a description of all agreements, arrangements or understandings with respect to the nomination or proposal among the Stockholder or the beneficial owner, if any, and any control person and each nominee, if any, and any other person or persons (naming such person or persons) including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable to the Stockholder or beneficial owner) pursuant to which the nomination or proposal is to be made by the Stockholder and a representation that the Stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of any such agreements, arrangements or understandings in effect as of the record date for the meeting;

(iv) as to each person whom the Stockholder proposes to nominate for election as a director, all information regarding each nominee that would be required to be disclosed in solicitations of proxies for election of directors in an election contest pursuant to Regulation 14A under the Exchange Act and such person's written consent to being named in the Corporation's proxy statement as a nominee and to serving as a director if elected; and as to any other business that the Stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such Stockholder and the beneficial owner, if any, on whose behalf the proposal is made and of any control person.

(d) The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation, including information relevant to a determination whether such person can be considered an independent director.

(e) Notwithstanding anything in the second sentence of Subsection (b) of this Section 12 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation at an annual meeting is increased and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting, a Stockholder's notice required by this Section 12 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(f) Only such business shall be conducted at a special meeting of Stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of Stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board of Directors or any committee thereof or Stockholders pursuant to Article III, Section 2 of these Bylaws or (ii) provided that the Board of Directors or Stockholders pursuant to Article III, Section 2 of these Bylaws have determined that directors shall be elected at such meeting, by any Stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 12 is delivered to the Secretary, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 12. The number of persons a Stockholder may nominate for election as a director at the special meeting (or in the case of a Stockholder giving the notice on behalf of a beneficial owner, the number of persons a Stockholder may nominate for election as a director at the special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting. In the event the Corporation calls a special meeting of Stockholders for the purpose of electing one or more directors to the Board of Directors, any such Stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the Stockholder's notice required by Subsection (b) of this Section 12 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors or the Stockholders pursuant to Article III, Section 2 of these Bylaws to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a Stockholder's notice as described above.

(g) Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 12 (including whether the Stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made provided timely and proper notice of such pursuant to this Section 12 or solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such nominee or proposal in compliance with the representation as required by Subsection (c)(iii)(C) of this Section 12) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Section 12 (including if a Stockholder did not abide by its representation to provide information as of the record date as specified in Subsection (c)(iii) of this Section 12), to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 12, unless otherwise required by law, if the Stockholder (or a qualified representative of the Stockholder) does not appear at the annual or special meeting of Stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of Article III, Section 2 and this Section 12, to be considered a qualified representative of the Stockholder, a person must be a duly authorized officer, manager or partner of such Stockholder or must be authorized by a writing executed by such Stockholder.

or an electronic transmission delivered by such Stockholder to act for such Stockholder as proxy at the meeting of Stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of Stockholders. In the event that a qualified representative of the Stockholder will appear at the annual or special meeting of Stockholders (including a Stockholder Requested Special Meeting) to make a nomination or propose business, the Stockholder must provide notice of the designation, including the identity of the representative, to the Corporation at least forty-eight (48) hours prior to such meeting. Where a Stockholder fails to provide such notice of designation to the Corporation within the required timeframe, such Stockholder must appear in person to present his, her or its nomination or proposed business at the annual or special meeting or such nomination shall be disregarded and such proposed business shall not be transacted as provided for above.

(h) For purposes of this Section 12 and Article IV, Section 9(b) of these Bylaws, “public announcement” shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(i) Notwithstanding the foregoing provisions of this Section 12, a Stockholder seeking to include a proposal in a proxy statement that has been prepared by the Corporation to solicit proxies shall comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 12. Nothing in this Section 12 shall be deemed to affect any rights (i) of Stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 promulgated under the Exchange Act or (ii) of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

**Section 13. Inspectors of Election.** The Corporation shall, in advance of any meeting of Stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of Stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. The inspector or inspectors so appointed or designated shall (a) ascertain the number of Shares outstanding and the voting power of each such Share, (b) determine the Shares of the Corporation represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of Shares of the Corporation represented at the meeting and such inspectors’ count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of Stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a nominee for an office at an election may serve as an inspector at such election.



**ARTICLE IV**  
**BOARD OF DIRECTORS**

Section 1. General Powers. The business and affairs of the Corporation shall be managed under the direction of its Board of Directors, except as otherwise provided in the Certificate of Incorporation or permitted under the DGCL.

Section 2. Number and Qualifications. Subject to the Certificate of Incorporation, the number of directors of the Corporation shall be fixed or changed from time to time by resolution adopted by the Board of Directors. Directors need not be residents of the State of Delaware or Stockholders of the Corporation. A director of the Corporation shall at all times meet all statutory and regulatory qualifications for a director of a publicly held bank holding company and financial holding company, as well as all requirements of the Corporation's primary regulators in their supervisory capacity.

Section 3. Terms of Directors. The terms of all directors shall expire at the next annual Stockholders meeting following their election or upon a director's earlier death, resignation, disqualification or removal. A decrease in the number of directors does not shorten an incumbent director's term. The term of a director elected to fill a vacancy shall expire at the next Stockholders meeting at which directors are elected or upon such director's earlier death, resignation, disqualification or removal. Despite the expiration of a director's term, however, such director shall continue to serve until the director's successor is elected and qualified or until such director's earlier death, resignation, disqualification or removal. Any director may be removed at any time with or without cause by the affirmative vote of the holders of a majority of the voting power of the outstanding Shares then entitled to vote at an election of directors. Any director may resign at any time upon notice to the Corporation.

Section 4. Vacancies and Newly Created Directorships. Except in those instances where the Certificate of Incorporation or applicable law provides otherwise, a majority of directors then in office, although less than a quorum, or a sole remaining director, may fill a vacancy or a newly created directorship on the Board of Directors. A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date or otherwise) may be filled before the vacancy occurs by a majority of directors then in office, including those who have so resigned, but the new director may not take office until the vacancy occurs.

Section 5. Compensation. The Board of Directors may provide for the compensation of directors for their services as such and may provide for the payment or reimbursement of any or all expenses reasonably incurred by them in attending meetings of the Board or of any committee of the Board or in the performance of their other duties as directors.

Section 6. Committees. The Board of Directors may from time to time create or eliminate one or more committees, including but not limited to Audit, Compensation and Human Capital, Corporate Governance, ESG, and Sustainability, and Enterprise Risk committees, and appoint members of the Board of Directors to serve on them. Each committee must have one or more members who serve at the pleasure of the Board of Directors, and the Board of Directors shall

periodically review, and approve any changes to, the charter describing the duties of each committee. The provisions of the DGCL and these Bylaws that govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the Board of Directors, shall apply to committees and their members as well. Each committee may exercise the authority of the Board of Directors to the fullest extent permitted by the DGCL and other applicable law. Nothing contained in this Section shall preclude the Board of Directors from establishing and appointing any committee, whether of directors or otherwise, not having or exercising the authority of the Board of Directors.

Section 7. Chairman of the Board. The Board of Directors may elect from among its members a director designated as the Chairman of the Board, but the appointment of a Chairman of the Board shall not be required. If a Chairman of the Board shall be elected, then the Chairman of the Board shall have such other duties and authority as may be prescribed by the Board of Directors from time to time. In general, the Chairman of the Board shall perform all duties incident to the position of chairman of the board or as may be prescribed by the Board of Directors or these Bylaws from time to time. The Board of Directors, by the affirmative vote of a majority of its members, may remove the Chairman of the Board.

Section 8. Lead Independent Director. A majority of the independent members of the Board of Directors may elect from among the independent members of the Board of Directors a Lead Independent Director, but the election of a Lead Independent Director shall not be required. The Lead Independent Director may be removed as a Lead Independent Director by vote of a majority of the independent members of the Board of Directors. If a Lead Independent Director shall be elected, then the Lead Independent Director shall have such duties and authority as may be prescribed by the Board of Directors from time to time. For purposes of this Bylaw, “independent” has the meaning set forth in the NYSE listing standards, unless the Corporation’s Common Stock ceases to be listed on the NYSE and is listed on another exchange, in which case such exchange’s definition of independent director shall apply.

Section 9. Inclusion of Director Nominations By Stockholders in the Corporation’s Proxy Materials.

(a) Subject to the terms and conditions set forth in these Bylaws, the Corporation shall include in its proxy statement and form of proxy (hereinafter, the “proxy materials”) for an annual meeting of Stockholders, in addition to the persons nominated for election by the Board of Directors or any committee thereof, the name, and with respect to the proxy statement, the Required Information (defined below), of any person nominated for election (the “Stockholder Nominee”) to the Board of Directors by one or more Stockholders that satisfies the notice, ownership and other requirements of this Section 9 (such person or group, the “Eligible Stockholder”).

(b) To nominate a Stockholder Nominee, the Eligible Stockholder must provide a notice that expressly elects to have its Stockholder Nominee included in the Corporation’s proxy materials pursuant to this Section 9 (the “Notice of Proxy Access Nomination”). To be timely, a Notice of Proxy Access Nomination must be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not earlier than the one hundred fiftieth (150th) calendar day and no later than the close of business on the one hundred

twentieth (120th) calendar day prior to the anniversary of the date the Corporation commenced mailing of its proxy materials in connection with the most recent annual meeting of Stockholders (the last day on which a Notice of Proxy Access Nomination may be delivered, the "Final Proxy Access Nomination Date"), provided that in the event that the date of such annual meeting is more than thirty (30) calendar days before or seventy (70) calendar days after its anniversary date, the Notice of Proxy Access Nomination must be so delivered not later than the close of business on the later of (i) the one hundred twentieth (120th) calendar day prior to such annual meeting or (ii) the tenth (10th) calendar day following the day on which a public announcement of the annual meeting date is first made. In addition to other requirements set forth in this Section 9, the Notice of Proxy Access Nomination must include the name and address of the Eligible Stockholder (including each Stockholder and/or beneficial owner whose stock ownership is counted for the purposes of qualifying as an Eligible Stockholder).

(c) For purposes of this Section 9, the "Required Information" that the Corporation will include in its proxy statement is (i) the information concerning the Stockholder Nominee and the Eligible Stockholder that the Corporation determines is required to be disclosed in the Corporation's proxy materials by the regulations promulgated under the Exchange Act; and (ii) if the Eligible Stockholder so elects, a Statement (defined below). Nothing in this Section 9 shall limit the Corporation's ability to solicit against and include in its proxy materials its own statements relating to any Stockholder Nominee.

(d) The maximum number of Stockholder Nominees (including Stockholder Nominees that were submitted by an Eligible Stockholder for inclusion in the Corporation's proxy materials pursuant to this Section 9 but either are subsequently withdrawn or that the Board of Directors decides to nominate as Board of Director nominees) appearing in the Corporation's proxy materials with respect to an annual meeting of Stockholders shall not exceed 20% of the number of directors in office as of the Final Proxy Access Nomination Date, or if such number is not a whole number, the closest whole number below 20% (the "Permitted Number"); provided, however, that the Permitted Number shall be reduced, but not below zero, by the number of such director candidates for which the Corporation shall have received one or more valid notices that a Stockholder (other than an Eligible Stockholder) intends to nominate director candidates at such applicable annual meeting of Stockholders pursuant to Article III, Section 12 of these Bylaws; provided, further, that in the event that one or more vacancies for any reason occurs on the Board of Directors at any time after the Final Proxy Access Nomination Date and before the date of the applicable annual meeting of Stockholders and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 9 exceeds the Permitted Number, each Eligible Stockholder will select one Stockholder Nominee for inclusion in the Corporation's proxy materials until the Permitted Number is reached, with preference provided based on the number (largest to smallest) of Shares owned by each Eligible Stockholder pursuant to this Section 9. If the Permitted Number is not reached after each Eligible Stockholder has selected one Stockholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

(e) An Eligible Stockholder is one or more Stockholders who owns and has owned, or are acting on behalf of one or more beneficial owners who own and have owned (as defined below), for at least three years as of date the Notice of Proxy Access Nomination is received by the Corporation, Shares representing at least 3% of the voting power entitled to vote generally in the election of directors (the "Required Shares"), and who continue to own the Required Shares at all times between the date the Notice of Proxy Access Nomination is received by the Corporation and the date of the applicable annual meeting of Stockholders, provided that the aggregate number of Stockholders, and, if and to the extent that a Stockholder is acting on behalf of one or more beneficial owners, of such beneficial owners, whose stock ownership is counted for the purposes of satisfying the foregoing ownership requirement shall not exceed twenty (20). Two or more funds that are (i) under common management and investment control or (ii) under common management and funded primarily by a single employer (such funds together under each of (i) or (ii) comprising a "Qualifying Fund") shall be treated as one Stockholder for the purpose of determining the aggregate number of Stockholders in this Section 9(e), and treated as one person for the purpose of determining ownership in Section 9(f), provided that each fund comprising a Qualifying Fund otherwise meets the requirements set forth in this Section 9. No Stockholder or beneficial holder may be a member of more than one group constituting an Eligible Stockholder under this Section 9.

(f) For purposes of calculating the Required Shares, "ownership" shall be deemed to consist of and include only the outstanding Shares as to which a person possesses both (i) the full voting and investment rights pertaining to the Shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such Shares; provided that the ownership of Shares calculated in accordance with clauses (i) and (ii) shall not include any Shares (A) that a person has sold in any transaction that has not been settled or closed, (B) that a person has borrowed or purchased pursuant to an agreement to resell or (C) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by a person, whether any such instrument or agreement is to be settled with Shares or with cash based on the notional amount or value of Shares, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, the person's full right to vote or direct the voting of any such Shares, and/or (2) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such person's Shares. "Ownership" shall include Shares held in the name of a nominee or other intermediary so long as the person claiming ownership of such Shares retains the right to instruct how the Shares are voted with respect to the election of directors and possesses the full economic interest in the Shares, provided that this provision shall not alter the obligations of any Stockholder to provide the Notice of Proxy Access Nomination. Ownership of Shares shall be deemed to continue during any period in which Shares have been loaned if the person claiming ownership may terminate the Shares lending within three (3) days and during any period in which any voting power has been delegated by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time without condition. The determination of the extent of "ownership" of Shares for purposes of this Section 9 shall be made in good faith by the Board of Directors, which determination shall be conclusive and binding on the Corporation and the Stockholders. The terms "owned," "owning" and other variations of the word "own" shall have correlative

meanings. An Eligible Stockholder shall include in its Notice of Proxy Access Nomination the number of Shares it is deemed to own for the purposes of this Section 9.

(g) No later than the Final Proxy Access Nomination Date, an Eligible Stockholder (including each Stockholder, fund comprising a Qualifying Fund and/or beneficial owner whose stock ownership is counted for the purposes of qualifying as an Eligible Stockholder) must provide the following information in writing to the Secretary: (i) one or more written statements from the record holder of the Shares (and from each intermediary through which the Shares are or have been held during the requisite three-year holding period) verifying that, as of the date the Notice of Proxy Access Nomination is sent to by the Corporation, the Eligible Stockholder owns, and has owned continuously for the preceding three (3) years, the Required Shares, and the Eligible Stockholder's agreement to provide (A) within five (5) business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date, and (B) immediate notice if the Eligible Stockholder ceases to own any of the Required Shares prior to the date of the applicable annual meeting of Stockholders; (ii) the written consent of each Stockholder Nominee to being named in the Corporation's proxy materials as a nominee and to serving as a director if elected; and (iii) a copy of the Schedule 14N that has been filed with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act. In addition, no later than the Final Proxy Access Nomination Date, an Eligible Stockholder (including each Stockholder, fund comprising a Qualifying Fund and/or beneficial owner whose stock ownership is counted for purposes of qualifying as an Eligible Stockholder) must provide to the Secretary a signed and written agreement of the Eligible Stockholder setting forth: (i) a representation that the Eligible Stockholder (A) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the Corporation, and does not presently have such intent, (B) intends to maintain qualifying ownership of the Required Shares through the date of the applicable annual meeting of Stockholders, (C) has not nominated and will not nominate for election to the Board of Directors at the applicable annual meeting of Stockholders any person other than its Stockholder Nominee, (D) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting of Stockholders other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (E) will not distribute to any Stockholder any form of proxy for the applicable annual meeting of Stockholders other than the form distributed by the Corporation, and (F) will provide facts, statements and other information in all communications with the Corporation and its Stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and otherwise will comply with all applicable laws, rules and regulations in connection with any actions taken pursuant to this Section 9; (ii) a representation that the Eligible Stockholder intends to maintain ownership (as defined in this Section 9) of the Required Shares for at least one year following the applicable annual meeting of Stockholders; (iii) in the case of a nomination by a group of Stockholders that together is such an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all members of the nominating stockholder group with respect to the nomination and matters related thereto, including withdrawal of the

nomination; and (iv) an undertaking that the Eligible Stockholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the Stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation, (B) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination, solicitation or other activity by the Eligible Stockholder in connection with its efforts to elect the Stockholder Nominee pursuant to this Section 9, and (C) file with the Securities and Exchange Commission any solicitation or other communication with the Corporation's Stockholders relating to the meeting at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act. In addition, no later than the Final Proxy Access Nomination Date, a Qualifying Fund whose stock ownership is counted for purposes of qualifying as an Eligible Stockholder must provide to the Secretary documentation reasonably satisfactory to the Board of Directors that demonstrates that the funds comprising the Qualifying Fund are either (i) under common management and investment control, or (ii) under common management and funded primarily by a single employer.

(h) The Eligible Stockholder may provide to the Secretary, at the time the information required by this Section 9 is provided, a written statement for inclusion in the Corporation's proxy materials for the applicable annual meeting of Stockholders, not to exceed 500 words, in support of the Eligible Stockholder's Stockholder Nominee (the "Statement"). Notwithstanding anything to the contrary contained in this Section 9, the Corporation may omit from its proxy materials any information or Statement (or portion thereof) that it, in good faith, believes would violate any applicable law or regulation.

(i) At the request of the Corporation, each Stockholder Nominee must: (i) provide an executed agreement, in a form deemed satisfactory by the Board of Directors or its designee, that (A) the Stockholder Nominee has read and agrees, if elected, to serve as a member of the Board of Directors, to adhere to the Corporation's Corporate Governance Guidelines and Code of Conduct and any other Corporation policies and guidelines applicable to directors, and (B) that the Stockholder Nominee is not and will not become a party to any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with his or her nomination, service or action as a director of the Corporation, or any agreement, arrangement or understanding with any person or entity as to how the Stockholder Nominee would vote or act on any issue or question as a director, in each case that has not been disclosed to the Corporation; (ii) submit all completed and signed questionnaires required of the Corporation's Board of Directors within five (5) business days of receipt of each such questionnaire from the Corporation; and (iii) provide within five (5) business days of the Corporation's request such additional information as the Corporation determines may be necessary to permit the Board of Directors to determine (A) if such Stockholder Nominee is independent under the listing standards of each principal U.S. exchange upon which the common stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System (the "Federal Reserve

Board”), the Office of the Comptroller of the Currency (the “OCC”) and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation’s directors, (B) if such Stockholder Nominee has any direct or indirect relationship with the Corporation other than those relationships that have been deemed categorically immaterial pursuant to the Corporation’s Corporate Governance Guidelines, and (C) if such Stockholder Nominee is not and has not been subject to any event specified in Item 401(f) of Regulation S-K (or successor rule) of the Securities and Exchange Commission. In the event that any information or communications provided by the Eligible Stockholder or the Stockholder Nominee to the Corporation or its Stockholders ceases to be true and correct in any respect or omits a fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of any such inaccuracy or omission in such previously provided information and of the information that is required to make such information or communication true and correct.

(j) Any Stockholder Nominee who is included in the Corporation’s proxy materials for a particular annual meeting of Stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at that annual meeting, or (ii) does not receive at least 20% of the votes cast in favor of the Stockholder Nominee’s election, will be ineligible to be a Stockholder Nominee pursuant to this Section 9 for the next two (2) annual meetings of Stockholders. Any Stockholder Nominee who is included in the Corporation’s proxy materials for a particular annual meeting of Stockholders, but subsequently is determined not to satisfy the eligibility requirements of this Section 9 or any other provision of the Corporation’s Bylaws, Certificate of Incorporation, Corporate Governance Guidelines or other applicable regulation at any time before the applicable annual meeting of Stockholders, will not be eligible for election at the relevant annual meeting of Stockholders and may not be substituted by the Eligible Stockholder that nominated such Stockholder Nominee. Any Eligible Stockholder (including each Stockholder, fund comprising a Qualifying Fund and/or beneficial owner whose stock ownership is counted for the purposes of qualifying as an Eligible Stockholder) whose Stockholder Nominee is elected as a director at the annual meeting of Stockholders will not be eligible to nominate or participate in the nomination of a Stockholder Nominee for the following two (2) annual meetings of Stockholders other than the nomination of such previously elected Stockholder Nominee.

(k) The Corporation shall not be required to include, pursuant to this Section 9, a Stockholder Nominee in its proxy materials for any meeting of Stockholders, or, if the proxy statement already has been filed, to allow the nomination of a Stockholder Nominee, notwithstanding that proxies in respect of such vote may have been received by the Corporation: (i) if the Stockholder Nominee or the Eligible Stockholder (or any member of any group of Stockholders that together is such Eligible Stockholder) who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a “participant” in another person’s, “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting of Stockholders other than its Stockholder Nominee(s) or a nominee of the Board of Directors; (ii) if another person is engaging in a “solicitation” within the meaning of Rule 14a- 1(l) under the Exchange Act in support of the election of any individual as a director at the applicable annual

meeting of Stockholders other than a nominee of the Board of Directors; (iii) who is not independent under the listing standards of each principal U.S. exchange upon which the common stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission, the Federal Reserve Board, the OCC, and any publicly disclosed standards used by the Board of Directors in determining and disclosing independence of the Corporation's directors, in each case as determined by the Board of Directors; (iv) who does not meet the audit committee independence requirements under the rules of any stock exchange on which the Corporation's securities are traded, is not a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule), is not an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision), is not experienced in matters of risk management for the purposes of Regulation YY of the Federal Reserve Board, is not independent for the purposes of the requirements under the FDIC Improvement Act related to designation as an "outside director," and is not a U.S. citizen; (v) whose election as a member of the Board of Directors would cause the Corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules and listing standards of the principal U.S. securities exchanges upon which the common stock of the Corporation is listed, or any applicable state or federal law, rule or regulation; (vi) who is or has been, within the past three (3) years, an officer or director of a competitor, for purposes of Section 8 of the Clayton Antitrust Act of 1914; (vii) whose election as a member of the Board of Directors would cause the Corporation to seek, or assist in the seeking of, advance approval or to obtain, or assist in the obtaining of, an interlock waiver pursuant to the rules or regulations of the Federal Reserve Board, the OCC or the Federal Energy Regulatory Commission; (viii) whose then-current or within the preceding ten (10) years' business or personal interests place such Stockholder Nominee in a conflict of interest with the Corporation or any of its subsidiaries that would cause such Stockholder Nominee to violate any fiduciary duties of directors under applicable law, including but not limited to, the duty of loyalty and duty of care, as determined by the Board of Directors; (ix) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years; (x) if such Stockholder Nominee or the applicable Eligible Stockholder (or any member of any group of Stockholders that together is such Eligible Stockholder) shall have provided information to the Corporation in connection with such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make any statement made, in light of the circumstances under which it was made, not misleading, as determined by the Board of Directors or any committee thereof; (xi) the Eligible Stockholder (or any member of any group of Stockholders that together is such Eligible Stockholder) does not appear at the applicable annual meeting of Stockholders to present the Stockholder Nominee for election; (xii) the Eligible Stockholder (or any member of any group of Stockholders that together is such Eligible Stockholder) or applicable Stockholder Nominee otherwise breaches or fails to comply with its representations or obligations pursuant to these Bylaws, including, without limitation, this Section 9; or (xiii) the Eligible Stockholder ceases to be an Eligible Stockholder for any reason, including but not limited to not owning the Required Shares through the date of the applicable annual meeting. For the purpose of this paragraph, clauses (iii) through (xiii) will result in the exclusion from the proxy materials pursuant to this Section 9 of the specific Stockholder Nominee to whom the ineligibility applies, or, if the proxy statement already has been filed, the ineligibility of the Stockholder Nominee; however, clauses (i) and (ii) will result in the exclusion from the proxy materials pursuant to this Section 9 of all Stockholder



Nominees from the applicable annual meeting of Stockholders, or, if the proxy statement already has been filed, the ineligibility of all Stockholder Nominees. Any Stockholder Nominee who is included in the Corporation's proxy materials for an annual meeting of Stockholders pursuant to this Section 9 shall tender an irrevocable resignation in advance of the annual meeting, provided that such resignation shall expire upon the certification of the voting results of that annual meeting of Stockholders. Such resignation shall become effective upon a determination by the Board of Directors or any committee thereof that (i) the information provided pursuant to this Section 9 to the Corporation by such individual or by the Eligible Stockholder (or any member of any group of Stockholders that together is such Eligible Stockholder) who nominated such individual was untrue in any material respect or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or (ii) such individual, or the Eligible Stockholder (or any member of any group of Stockholders that together is such Eligible Stockholder) who nominated such individual, shall have breached or failed to comply with its agreements, representations undertakings and/or obligations pursuant to these Bylaws, including, without limitation, this Section 9.

## **ARTICLE V**

### **MEETINGS OF DIRECTORS**

Section 1. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this Bylaw provision immediately after, and at the same place as, the annual meeting of the Stockholders. In addition, the Board of Directors may determine the date, time and place, within or without the State of Delaware for the holding of additional regular meetings.

Section 2. Special Meetings. Special meetings of the Board of Directors may be held at any date, time and place, within or without the State of Delaware, upon the call of the Chairman of the Board, the Lead Independent Director, the Chief Executive Officer, the President or of the Secretary acting under instructions from the Chairman of the Board, the Lead Independent Director, the Chief Executive Officer or the President, or upon the call of any three directors. Special meetings may be held at any date, time and place and without special notice by unanimous consent of the directors.

Section 3. Notice. The person or persons calling a special meeting of the Board of Directors shall, at least twenty-four (24) hours before the meeting, give notice thereof by any usual means of communication. Such notice may be communicated, without limitation, in person; by telephone, facsimile, or other electronic transmission; or by mail or private carrier. Notice of a directors' meeting is effective at the earliest of the following:

- (a) when received;
- (b) if by facsimile or other electronic transmission, when sent addressed to the director; or

- (c) on the date shown on the confirmation of delivery issued by United States mail or a private carrier, if sent by overnight delivery to the address of the director last known to the Corporation.

Oral notice is effective when actually communicated to the director. Notice of an adjourned meeting of directors need not be given if the time and place are fixed at the meeting being adjourned. The notice of any meeting of directors need not describe the purpose of the meeting unless otherwise required by the DGCL.

Section 4. Waiver of Notice. A director may waive any notice required by the DGCL, the Certificate of Incorporation or these Bylaws before or after the date and time stated in the notice. The waiver may be in writing, signed by the director entitled to the notice, or by electronic transmission of such director and filed with the minutes or corporate records, except that, notwithstanding the foregoing requirement of notice, a director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting expressly objects to holding the meeting or transacting business at the meeting because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors or members of a committee of directors need be specified in any waiver of notice unless so required by the Certificate of Incorporation.

Section 5. Quorum. A majority of the number of directors in office immediately before the meeting begins, but in no case less than one-third (1/3) of the total number of directors fixed by the Board of Directors, shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of directors present may adjourn the meeting from time to time without further notice.

Section 6. Manner of Acting. Except as otherwise provided in the DGCL, the Certificate of Incorporation or herein, the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 7. Conduct of Meetings. The Chairman of the Board shall preside at all meetings of the Board of Directors or, in the Chairman of the Board's absence or at the Chairman of the Board's request, the Lead Independent Director shall so preside; provided, however, that in the absence or at the request of both the Chairman of the Board and the Lead Independent Director, or if there shall not be persons holding such offices, the person selected to preside at a meeting of directors by a vote of a majority of the directors present shall preside at such meeting. The Secretary, or in the absence or at the request of the Secretary, any person designated by the person presiding at a meeting of the Board of Directors, shall act as secretary of such meeting.

Section 8. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if the action is taken by all members of the Board of Directors or such committee, as the case may be. The action must be evidenced by one or more consents in writing or by electronic transmission describing the action taken. After an action is taken, the consent or consents shall

be filed with the records of the Board of Directors or of such committee in the same paper or electronic form as the minutes are maintained.

Section 9. Participation Other Than in Person. Members of the Board of Directors or any committee designated by the Board of Directors may participate in a Board of Directors or committee meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 9 shall constitute presence in person at the meeting.

## **ARTICLE VI**

### **OFFICERS**

Section 1. Officers of the Corporation. The officers of the Corporation may include a Chief Executive Officer, a President, one or more Vice Chairmen, one or more individuals designated by the Board of Directors as an “executive officer” for purposes of the Securities and Exchange Commission’s rules and regulations (the “Executive Officers”), one or more Managing Directors (including the officer title of Directors), one or more Vice Presidents (including Executive Vice Presidents, Senior Vice Presidents and Assistant Vice Presidents), a Secretary, a Treasurer, a chief internal audit executive (the “Chief Audit Executive”), and such other officers, assistant or deputy officers and agents, as may be elected from time to time by or under the authority of the Board of Directors (collectively, with the Chief Executive Officer, the President, the Vice Chairmen, the Executive Officers, the Managing Directors, the Vice Presidents, the Secretary, the Treasurer, and the Chief Audit Executive, the “Officers”). The Officers shall have such duties and authorities as may be prescribed by these Bylaws, the Board of Directors, the Chief Executive Officer or by the Officer to whom such Officer reports.

The same individual may simultaneously hold more than one office in the Corporation, but no individual may act in more than one capacity where action of two or more Officers is required. The title of any Officer may include any additional designation descriptive of such Officer’s duties as the Board of Directors may prescribe.

Section 2. Appointment and Term. The Officers of the Corporation shall be elected by the Board of Directors, by a committee thereof or by an Officer authorized by the Board of Directors or a committee thereof to elect one or more Officers; provided, however, that no Officer may be authorized to elect the Chief Executive Officer or the President. Each Officer shall hold office until his or her death, resignation, retirement, removal or disqualification or until such Officer’s successor is elected and qualified.

Section 3. Compensation. The compensation of all Officers of the Corporation shall be fixed by or under the authority of the Board of Directors. No Officer shall be prevented from receiving such salary by reason of the fact that such Officer is also a director.

Section 4. Resignation and Removal of Officers. An Officer may resign at any time by communicating such Officer’s resignation to the Corporation. A resignation is effective when it is communicated unless it specifies in writing a later effective date. If a resignation is made

effective at a later date and the Corporation accepts the future effective date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor does not take office until the effective date. The Board of Directors, by the affirmative vote of a majority of its members, may remove the Chief Executive Officer or the President whenever in its judgment the best interest of the Corporation would be served thereby. In addition, the Board of Directors or a committee or an Officer authorized by the Board of Directors or a committee thereof may remove any other Officer at any time with or without cause.

Section 5. Contract Rights of Officers. The appointment of an Officer does not itself create contract rights. An Officer's removal does not itself affect the Officer's contract rights, if any, with the Corporation, and an Officer's resignation does not itself affect the Corporation's contract rights, if any, with the Officer.

Section 6. Chief Executive Officer. The Board of Directors may elect a Chief Executive Officer. The Chief Executive Officer shall, subject to the direction and control of the Board of Directors, supervise and control the business and affairs of the Corporation. In general the Chief Executive Officer shall perform all duties incident to the position of chief executive officer or as may be prescribed by the Board of Directors or these Bylaws from time to time.

Section 7. President. The Board of Directors may elect a President. The President shall perform the duties and exercise the powers of that office and, in addition, the President shall perform such other duties and shall have such other authority as the Board of Directors shall prescribe. In general the President shall perform all duties incident to the position of president or as may be prescribed by the Board of Directors or these Bylaws from time to time. The Board of Directors shall, if it deems such action necessary or desirable, designate the Officer of the Corporation who is to perform the duties of the President in the event of such Officer's absence or inability to act.

Section 8. Secretary. The Secretary shall keep the minutes of meetings of the Stockholders and of the Board of Directors and be custodian of the corporate records, and in general perform all duties incident to the office of the secretary and such other duties as from time to time may be prescribed by these Bylaws or assigned to the Secretary by the Chief Executive Officer, the Board of Directors or a committee created by the Board of Directors.

Section 9. Treasurer. The Treasurer shall have charge and custody of all funds and securities of the Corporation, and in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be prescribed by these Bylaws, or assigned to the Treasurer by the Chief Executive Officer, the Board of Directors or a committee created by the Board of Directors.

## ARTICLE VII

### SHARES AND THEIR TRANSFER

Section 1. Shares. Shares of the Corporation will be uncertificated unless the Board of Directors by resolution determines otherwise. Shares represented by an existing certificate will remain certificated until such certificate is surrendered to the Corporation. Shares represented by certificates shall be in such form as shall be required by the DGCL, and as determined by the Board of Directors. If certificates are issued, each certificate shall be signed by, or in the name of the Corporation by, any two authorized Officers, including but not limited to the Chief Executive Officer, a Vice Chairman of the Board, the President, a Vice President, the Secretary or the Treasurer of the Corporation certifying the number of Shares represented by such certificate. Any or all the signatures on the certificate may be a facsimile. In case any Officer or any transfer agent or registrar (whose roles are described in Section 4 below) who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such Officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such Officer, transfer agent, or registrar at the date of issue.

Section 2. Stock Transfer Books and Transfer of Shares. The Corporation, or its agent, shall keep a book or set of books to be known as the stock transfer books of the Corporation, containing the name of each stockholder of record, together with such Stockholder's address and the number and class or series of Shares held by such Stockholder. Transfer of Shares of the Corporation shall be made on the stock transfer books of the Corporation, and if such Shares are represented by certificates only upon surrender of the certificates for the Shares sought to be transferred by the holder of record thereof or by such holder's duly authorized agent, transferee or legal representative, who shall furnish proper evidence of authority to transfer with the Secretary. All certificates surrendered for transfer shall be canceled, and the Shares shall thereafter be uncertificated, unless otherwise determined by a resolution of the Board of Directors.

Section 3. Lost Certificates. The Chief Executive Officer, the President, any Vice Chairman, any Executive Officer, any Senior Vice President, any Managing Director, the Secretary, the Treasurer, or such other Officers, employees or agents as the Board of Directors or any of the designated Officers may direct, may authorize the issuance of uncertificated Shares, or, if determined by a resolution of the Board of Directors, a replacement stock certificate, in place of a certificate claimed to have been lost, stolen, destroyed or mutilated, upon receipt of an affidavit of such fact from the person or persons claiming the loss or destruction and any other documentation satisfactory to the Board of Directors or such Officer. At the discretion of the party reviewing such claim, any such claimant may be required to give the Corporation a bond in such sum as it may direct to indemnify against the loss from any claim with respect to the certificate claimed to have been lost, stolen or destroyed.

Section 4. Transfer Agent and Registrar; Regulations. The Corporation may, if and whenever the Board of Directors so determines, maintain in the State of Delaware or any other state of the United States, one or more transfer offices or agencies and also one or more registry offices, which officers and agencies may establish rules and regulations for the issue, transfer and registration of certificates and uncertificated Shares not inconsistent with these Bylaws or applicable law. No certificates for Shares in respect of which a Transfer Agent and Registrar shall have been designated shall be valid unless countersigned by such Transfer Agent and registered by such Registrar. Any such countersignature may be a facsimile. The Board may also make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates and uncertificated Shares.

## **ARTICLE VIII**

### **INDEMNIFICATION**

Section 1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit, arbitration, alternative dispute mechanism, inquiry, judicial, administrative or legislative hearing, investigation or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature (a "Proceeding"), by reason of the fact that he or she is or was a director, officer, or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer, manager or employee of an Affiliate or of another corporation, association, limited liability company, partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an "Indemnatee"), whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, manager, employee or agent or in any other capacity while serving as a director, officer, manager, or employee or agent, shall be vested with the contractual right to indemnification and be held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, taxes, including ERISA excise taxes, or penalties and amounts paid in settlement) reasonably incurred or suffered by such Indemnatee in connection therewith if the Indemnatee acted in good faith and in a manner the Indemnatee reasonably believed to be in or not opposed to the best interest of the Corporation or other entity covered by this Article VIII, and, with respect to any criminal action or Proceeding, had no reasonable cause to believe that Indemnatee's conduct was unlawful. Such indemnification shall not be retroactively amended to adversely affect the rights of an Indemnatee in connection with any act, omissions, facts or circumstances occurring prior to the date of amendment, shall continue as to an Indemnatee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the Indemnatee's heirs, executors and administrators; provided, however, that, except as provided in Section 3 of this Article VIII with respect to Proceedings to enforce rights to indemnification and advancement under this Article VIII, the Corporation shall indemnify any such Indemnatee in connection with a Proceeding (or part thereof) initiated by such Indemnatee (including claims and counterclaims, whether such counterclaims are asserted by (a) such Indemnatee, or (b) the Corporation in a Proceeding initiated by such Indemnatee) only if such Proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. This

Article shall supersede any conflicting provisions contained in the corporate governance documents of any Affiliate of the Corporation.

**Section 2. Right to Advancement of Expenses.** The Corporation shall pay the expenses (including attorney's fees) incurred by an Indemnitee in defending any Proceeding (an "Advancement of Expenses"); provided, however, that an Advancement of Expenses incurred by or on behalf of an Indemnitee shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "Undertaking"), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a "Final Adjudication") that such Indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.

**Section 3. Right of Indemnitee to Bring Suit.** The rights to indemnification and to the Advancement of Expenses conferred in Sections 1 and 2 of this Article VIII, as limited by Section 7 hereof, are contract rights. If a claim under Sections 1 or 2 of this Article VIII is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, except in the case of a claim for an Advancement of Expenses, in which case the applicable period shall be 20 days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit to the fullest extent permitted by law. In (i) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an Advancement of Expenses) it shall be a defense that, and (ii) in any suit by the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its Board of Directors, a committee thereof or independent legal counsel) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, a committee thereof or independent legal counsel) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such Advancement of Expenses, under this Article or otherwise shall be on the Corporation.

**Section 4. Non-Exclusivity of Rights.** The rights to indemnification and to the Advancement of Expenses conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation's Certificate of Incorporation, Bylaws, agreement, vote of Stockholders or disinterested directors or otherwise.

Section 5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or any person serving at the request of the Corporation as a director, officer, manager, employee or agent of another corporation, association, limited liability company, partnership, joint venture, trust or other enterprise, against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6. Indemnification of Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors or its designee, grant rights to indemnification, and to the Advancement of Expenses to any agent of the Corporation to the fullest extent of the provisions of this Article VIII with respect to the indemnification and Advancement of Expenses of directors and officers of the Corporation.

Section 7. Limitations on Indemnification. All indemnification and insurance provisions contained in this Article VIII are subject to the limitations and prohibitions imposed by federal law, including the Securities Act of 1933 and the Federal Deposit Insurance Act, and any implementing regulations concerning indemnification.

Section 8. Severability. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever (a) the validity, legality and enforceability of the remaining provisions of this Article VIII (including, without limitation, all portions of any paragraph of this Article VIII containing any such provision held to be invalid, illegal or unenforceable, that are not by themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, all portions of any paragraph of this Article VIII containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent of the parties that the Corporation provide protection to the Indemnitee to the fullest enforceable extent.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

Section 1. Execution of Instruments. All indentures, mortgages, deeds, conveyances, contracts, notes, drafts, loan documents, letters of credit, master agreements, swap agreements, guarantees, discharges, releases, satisfactions, settlements, affidavits, bonds, undertakings, powers of attorney, and other instruments or contracts may be signed, executed, acknowledged, verified, attested, delivered or accepted on behalf of the Corporation by an Officer (as such term is defined in Article VI, Section 1) or any individual who is listed on the Corporation's Officer's payroll file in a position equal to any of the Officers, or such other officers, employees or agents as the Board of Directors, the Chief Executive Officer or any Officer reporting directly to the Chief Executive Officer may direct in a written delegation kept in the minute book of the Corporation. The provisions of this Section 1 are supplementary to any other provision of these Bylaws and shall not be construed to authorize execution of instruments otherwise dictated by law.



Section 2. Voting of Ownership Interests. The Chief Executive Officer, the President, any Vice Chairman, any Executive Officer, the Secretary, the Treasurer, or such other Officers, employees or agents as the Board of Directors or such designated Officers may direct are authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares of stock or other ownership interests in any Affiliate or any other corporations, associations, limited liability companies, partnerships, or other entities standing in the name of the Corporation. The authority herein granted to the individuals to vote or represent on behalf of the Corporation any and all ownership interests held by the Corporation may be exercised either by the individuals in person or by any duly executed proxy or power of attorney.

Section 3. Distributions. The Board of Directors may from time to time authorize, and the Corporation may pay or distribute, dividends or other distributions on its outstanding Shares in such manner and upon such terms and conditions as are permitted by the Certificate of Incorporation and the DGCL.

Section 4. Seal and Attestation. Any Officer of the Corporation is empowered to affix the corporate seal on all documents, and may attest the signature of any person executing an instrument on behalf of the Corporation. In the execution on behalf of the Corporation of any instrument, document, writing, notice or paper, it shall not be necessary to affix the corporate seal of the Corporation thereon, and any such instrument, document, writing, notice or paper when executed without said seal affixed thereon shall be of the same force and effect and as binding on the Corporation as if said corporate seal had been affixed thereon in each instance.

Section 5. Amendments. The Board of Directors may amend or repeal these Bylaws and may adopt new Bylaws; provided, however, that any amendment or repeal of, or the adoption of any Bylaw inconsistent with, Article III, Section 10 of these Bylaws shall also require the approval of the Stockholders of the Corporation. The Stockholders of the Corporation may also amend or repeal these Bylaws and may adopt new Bylaws.

## **ARTICLE X**

### **EMERGENCY**

#### **BYLAWS**

Section 1. Emergency Bylaws. This Article X shall be operative during any emergency resulting from an attack on the United States or on a locality in which the Corporation conducts its business or customarily holds meetings of its Board of Directors or its Stockholders, or during any nuclear or atomic disaster or during the existence of any catastrophe, including, but not limited to, an epidemic or pandemic, and a declaration of a national emergency by the United States government, or other similar emergency condition, irrespective of whether a quorum of the Board of Directors or a standing committee thereof can be readily convened for action (an "Emergency"), notwithstanding any different or conflicting provision in the preceding Articles of these Bylaws, in the Certificate of Incorporation or in the DGCL. Without limiting any powers or emergency actions that the Board of Directors may take during an Emergency, during an

Emergency, the Board of Directors may take any action that it determines to be practical and necessary to address the circumstances of the Emergency including, without limitation, taking the actions with respect to stockholder meetings and dividends as provided in the DGCL. To the extent not inconsistent with the provisions of this Article, the Bylaws provided in the preceding Articles and the provisions of the Certificate of Incorporation of the Corporation shall remain in effect during such Emergency, and upon termination of such Emergency, the provisions of this Article X shall cease to be operative.

Section 2. Meetings. During any Emergency, a meeting of the Board of Directors, or any committee thereof, may be called by any member of the Board of Directors, the Chairman of the Board, the Lead Independent Director, the Chief Executive Officer, President, a Vice Chairman, the Secretary or any Officer reporting directly to the Chief Executive Officer. Notice of the time and place of the meeting shall be given by any available means of communication by the person calling the meeting to such of the directors and the members of the Corporation's Management Operating Committee, or any successor committee thereto, (the "Designated Officers") as it may be feasible to reach. Such notice shall be given at such time in advance of the meeting as, in the judgment of the person calling the meeting, circumstances permit. As a result of any Emergency, the Board of Directors may determine that a meeting of Stockholders not be held at any place, but instead be held solely by means of remote communication in accordance with the DGCL.

Section 3. Quorum. At any meeting of the Board of Directors, or any committee thereof, called in accordance with Section 2 of this Article X, the presence of one director shall constitute a quorum for the transaction of business. Vacancies on the Board of Directors, or any committee thereof, may be filled by a majority vote of the directors in attendance at the meeting. In the event that no directors are able to attend a meeting of the Board of Directors, then the Designated Officers in attendance shall serve as directors for the meeting, without any additional quorum requirement and with full powers to act as directors of the Corporation.

Section 4. Amendments. At any meeting called in accordance with Section 2 of this Article X, the Board of Directors or the committees thereof, as the case may be, may modify, amend or add to the provisions of this Article X so as to make any provision that may be practical or necessary for the circumstances of the Emergency.

Section 5. Contingency Plan. The Corporation may develop a contingency plan for the management of the Corporation in the event of an Emergency. The contingency plan may be reviewed or modified by the Board of Directors from time to time as provided in this Article X.

Section 6. Liability. No Officer, director or employee of the Corporation acting in accordance with the provisions of this Article X shall be liable except for willful misconduct.

Section 7. Repeal or Change. The provisions of this Article X shall be subject to repeal or change by further action of the Board of Directors or by action of the Stockholders, but no such repeal or change shall modify the provisions of Section 6 of this Article X with regard to action taken prior to the time of such repeal or change.

**CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002  
FOR THE CHIEF EXECUTIVE OFFICER**

I, Brian T. Moynihan, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Bank of America Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 30, 2020

/s/ Brian T. Moynihan  
Brian T. Moynihan  
Chief Executive Officer

**CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002  
FOR THE CHIEF FINANCIAL OFFICER**

I, Paul M. Donofrio, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Bank of America Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 30, 2020

/s/ Paul M. Donofrio  
Paul M. Donofrio  
Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Brian T. Moynihan, state and attest that:

1. I am the Chief Executive Officer of Bank of America Corporation (the registrant).
2. I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:
  - the Quarterly Report on Form 10-Q of the registrant for the quarter ended September 30, 2020 (the periodic report) containing financial statements fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
  - the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the registrant.

Date: October 30, 2020

/s/ Brian T. Moynihan  
Brian T. Moynihan  
Chief Executive Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Paul M. Donofrio, state and attest that:

1. I am the Chief Financial Officer of Bank of America Corporation (the registrant).
2. I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:
  - the Quarterly Report on Form 10-Q of the registrant for the quarter ended September 30, 2020 (the periodic report) containing financial statements fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
  - the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the registrant.

Date: October 30, 2020

/s/ Paul M. Donofrio  
Paul M. Donofrio  
Chief Financial Officer