

**SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported):  
December 3, 2009**

**BANK OF AMERICA CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State of Incorporation)

**1-6523**  
(Commission File Number)

**56-0906609**  
(IRS Employer Identification No.)

**100 North Tryon Street  
Charlotte, North Carolina 28255**  
(Address of principal executive offices)

**(704) 386-5684**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**ITEM 3.03. MATERIAL MODIFICATION TO RIGHTS OF SECURITYHOLDERS.**

Upon issuance of the Registrant's Common Equivalent Junior Preferred Stock, Series S, \$0.01 par value per share (the "Series S Preferred Stock") on December 9, 2009, under the Certificate of Designations for the Series S Preferred Stock, the Board of Directors of the Registrant may not declare or pay any cash dividend on, or make a cash distribution in respect of, the Registrant's common stock, including, but not limited to regular quarterly dividends, unless it declares and pays a dividend on the Series S Preferred Stock at the same time, on the same terms and in the same amounts, based on the number of shares of the Registrant's common stock into which the Series S Preferred Stock is then convertible. In addition, if the Registrant's stockholders reject an amendment to its Amended and Restated Certificate of Incorporation to increase the number of authorized shares of its common stock to a number at least sufficient to permit the full conversion of the Series S Preferred Stock into its common stock (the "Amendment"), or if the Registrant fails to obtain stockholder approval of the Amendment on or before the 105<sup>th</sup> day following the issuance of the Series S Preferred Stock on December 9, 2009, then the ability of the Registrant to (1) declare or pay dividends on, make distributions with respect to, or redeem, repurchase or acquire, or make a liquidation payment with respect to, the Registrant's common stock or (2) redeem, repurchase, acquire or make a liquidation payment, or pay or make available monies for a sinking fund for the redemption of any Parity Stock (as defined below), will be subject to certain restrictions in the event that the Registrant fails to declare and pay Additional Dividends (as defined in Item 5.03 below) (or declare and set aside a sum sufficient for payment thereof) on its Series S Preferred Stock. "Parity Stock" means any class or series of the Registrant's capital stock issued after the issuance of the Series S Preferred Stock on December 9, 2009 that does not by its terms rank senior to the Series S Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding-up of the Registrant. The restrictions are set forth in the Certificate of Designations described in Item 5.03 below.

**ITEM 5.03. AMENDMENT TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGE IN FISCAL YEAR.**

On December 3, 2009, the Registrant filed a Certificate of Designations (the "Certificate of Designations") with the Delaware Secretary of State for the purpose of amending its Certificate of Incorporation to fix the designations, preferences, limitations and relative rights of the Series S Preferred Stock. Each share of Series S Preferred Stock will automatically convert in full into shares of the Registrant's common stock following the approval of the Amendment as set forth in the Certificate of Designations, at an initial rate of 1,000 shares of common stock for each share of Series S Preferred Stock, so that, in the aggregate, based on this initial rate, 1,286,000,000 shares of the Registrant's common stock will be issuable upon conversion of the Series S Preferred Stock. The Series S Preferred Stock has a liquidation preference initially equal to \$15,000 per share. Dividends on the Series S Preferred Stock are not mandatory; however, the Board of Directors of the Registrant may not declare or pay any cash dividend on, or make a cash distribution in respect of, the Registrant's common stock, including, but not limited to regular quarterly dividends, unless it declares and pays a dividend on the Series S Preferred

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Stock at the same time, on the same terms and in the same amounts, based on the number of shares of the Registrant's common stock into which the Series S Preferred Stock is then convertible. A holder of the Series S Preferred Stock will not be entitled to receive dividends on the Series S Preferred Stock declared by the Board of Directors of the Registrant unless such holder is a holder of record of the Series S Preferred Stock as of the close of business on the record date for such dividend. As a result, since the issue date for the Series S Preferred Stock is after the record date set by the Board of Directors of the Registrant for the common stock dividend for the current calendar quarter, December 4, 2009, holders of the Series S Preferred Stock will not be entitled to receive such dividend. In addition, if the Registrant's stockholders reject the Amendment, or if the Registrant fails to obtain stockholder approval within 105 days following the issuance of the Series S Preferred Stock on December 9, 2009, then non-cumulative quarterly cash dividends will be payable on the Series S Preferred Stock, when, as, and if declared by the Registrant's Board of Directors, at an initial annual rate of 10% of the liquidation preference amount of the Series S Preferred Stock (the "Additional Dividends"). For each quarter subsequent to the first quarter for which such additional dividends are payable, this initial annual rate will increase by 2% to a maximum annual rate of 16%. Holders of the Series S Preferred Stock will vote on an as-converted basis together with holders of the Registrant's common stock on all matters upon which the holders of the Registrant's common stock are entitled to vote, except on the Amendment, and will have certain additional voting rights in the case of certain dividend arrearages. The Certificate of Designations is attached hereto as Exhibit 3.1 and is incorporated by reference herein.

**ITEM 8.01. OTHER ITEMS.**

(a) By action dated December 3, 2009, a Committee previously appointed by the Board of Directors of the Registrant approved and ratified the public offering of \$19,290,000,000 Common Equivalent Securities, consisting of Depositary Shares (the "Depositary Shares"), each representing a 1/1,000<sup>th</sup> interest in a share of the Series S Preferred Stock, and Contingent Warrants (the "Contingent Warrants") to purchase an aggregate of 60,056,200 shares of the Registrant's common stock, to various underwriters (the "Underwriters") and otherwise established the terms and conditions of the Common Equivalent Securities, the Series S Preferred Stock, the Depositary Shares, and the Contingent Warrants. On December 3, 2009, the Registrant entered into an underwriting agreement with the various Underwriters (the "Underwriting Agreement") for the Common Equivalent Securities. The terms of the offering and the Common Equivalent Securities, the Series S Preferred Stock, the Depositary Shares, and the Contingent Warrants are described in the Registrant's Prospectus dated April 20, 2009 constituting a part of the Registration Statement (hereinafter described), as supplemented by a Final Prospectus Supplement dated December 3, 2009. The Underwriting Agreement is included as Exhibit 1.1 hereto.

The Common Equivalent Securities were issued pursuant to the Registrant's Registration Statement on Form S-3, Registration No. 333-158663, on a delayed basis pursuant to Rule 415 under the Securities Act of 1933, as amended.

(b) On December 9, 2009, the Registrant announced that it has repurchased all 600,000 shares of its Fixed Rate Cumulative Perpetual Preferred Stock, Series N; all 400,000 shares of its Fixed Rate Cumulative Perpetual Preferred Stock, Series Q; and all 800,000 shares

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of its Fixed Rate Cumulative Perpetual Preferred Stock, Series R, that the Registrant issued to the U.S. Treasury pursuant to the Troubled Asset Relief Program. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated by reference herein.

**ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.**

(d) Exhibits.

The following exhibits are filed herewith:

EXHIBIT NO.	DESCRIPTION OF EXHIBIT
1.1	Underwriting Agreement, dated December 3, 2009 with respect to the offering of \$19,290,000,000 Common Equivalent Securities, Consisting of Depositary Shares, each representing a 1/1,000 <sup>th</sup> interest in a share of Common Equivalent Junior Preferred Stock, Series S and Contingent Warrants to Purchase a Fraction of a Share of Common Stock (Which Contingent Warrants in the Aggregate Allow for the Purchase of 60,056,200 Shares of Common Stock)
3.1	Certificate of Designations for the Series S Preferred Stock, incorporated herein by reference to Exhibit 3.1 of the Registrant's Form 8-A filed with the Securities and Exchange Commission on December 4, 2009
4.1	Form of Deposit Agreement, dated December 3, 2009, among the Registrant, Computershare Inc., Computershare Trust Company, N.A. and the Holders from time to time of the Depositary Receipts, incorporated herein by reference to Exhibit 4.1 of the Registrant's Form 8-A filed with the Securities and Exchange Commission on December 4, 2009
4.2	Form of Certificate for the Series S Preferred Stock, incorporated herein by reference to Exhibit 4.2 of the Registrant's Form 8-A filed with the Securities and Exchange Commission on December 4, 2009
4.3	Form of Depositary Receipt for the Depositary Shares, incorporated herein by reference to Exhibit 4.3 of the Registrant's Form 8-A filed with the Securities and Exchange Commission on December 4, 2009
4.4	Form of Common Equivalent Security Certificate, incorporated herein by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 3, 2009
4.5	Form of Contingent Warrant, incorporated herein by reference to Exhibit 4.2 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 3, 2009
5.1	Opinion of McGuireWoods LLP, regarding legality of the Common Equivalent Securities, the Series S Preferred Stock, the Depositary Shares,

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EXHIBIT NO.

DESCRIPTION OF EXHIBIT

the Contingent Warrants, and the Registrant's common stock

99.1

Press Release dated December 9, 2009

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**SIGNATURES**

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 hereunto duly authorized.

**BANK OF AMERICA CORPORATION**

By: /s/ Teresa M. Brenner  
Teresa M. Brenner  
Associate General Counsel

Dated: December 9, 2009

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## INDEX TO EXHIBITS

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## BANK OF AMERICA CORPORATION

## UNDERWRITING AGREEMENT

**\$19,290,000,000 Common Equivalent Securities, Consisting of Depositary Shares, Each Representing a  
1/1,000<sup>th</sup> Interest in a Share of Common Equivalent Junior Preferred Stock, Series S and  
Contingent Warrants to Purchase a Fraction of a Share of Common Stock (Which Contingent Warrants in  
the Aggregate Allow for the Purchase of 60,056,200 Shares of Common Stock)**

New York, New York  
December 3, 2009

To the Representative  
named in Schedule I  
hereto of the Underwriters  
named in Schedule II hereto

and UBS Securities LLC  
as Qualified Independent Underwriter and Co-Manager

Dear Ladies and Gentlemen:

Bank of America Corporation, a Delaware corporation (the "Company"), proposes to issue and sell to the underwriters named in Schedule II hereto (the "Underwriters"), for whom you are acting as representative (the "Representative"), \$19,290,000,000 of Common Equivalent Securities (the "Securities"). Each Security will initially consist of (i) one depositary share (each, a "Depositary Share"), representing a 1/1,000<sup>th</sup> interest in a share of the Company's Common Equivalent Junior Preferred Stock, Series S (the "Common Equivalent Stock"), each share of which, upon the approval of the Company's stockholders of an amendment to the Amended and Restated Certificate of Incorporation of the Company (the "Amendment") to increase the number of authorized shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), from 10,000,000,000 to such amount as is authorized by the Board of Directors of the Company, which amount shall not be less than a sum sufficient to effect the conversion of the Common Equivalent Stock (the "Stockholder Approval"), will automatically convert in full into shares of Common Stock, at a conversion rate of 1,000 shares of Common Stock for each share of Common Equivalent Stock; and (ii) a contingent warrant to purchase 0.0467 of a share of Common Stock (the contingent warrants in the aggregate allow for the purchase of 60,056,200 shares of Common Stock) at an exercise price of \$0.01 per share that will become exercisable for a 30-day period (at the end of which such contingent warrant will immediately and automatically expire) if the Company's stockholders reject the Amendment (each, a "Contingent Warrant"). The Depositary Shares, when issued, will be deposited against delivery of Depositary Receipts (the "Depositary Receipts"), which will evidence the Common Equivalent Stock, that are to be issued by Computershare Trust Company, N.A., as depository (the "Depository"), under the Deposit Agreement dated December 3, 2009, by and among the Company, Computershare Inc., the Depository and the holders from time to time of the Depositary Receipts described therein (the "Deposit Agreement"). Computershare Inc. and Computershare Trust Company, N.A., collectively, will serve as warrant agent for the

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Contingent Warrants under the Warrant Agent Agreement dated December 3, 2009 by and among the Company, Computershare Inc. and Computershare Trust Company, N.A. Where appropriate, references in this Agreement to the Depositary Shares include the underlying shares of Common Equivalent Stock.

The Securities are to be sold to each Underwriter, acting severally and not jointly, in such amounts as are listed in Schedule II opposite the name of each Underwriter. The Securities are described more fully in the Prospectus, described below.

The Company hereby confirms its engagement of UBS Securities LLC, and UBS Securities LLC hereby confirms its agreement with the Company, to render services as a “qualified independent underwriter” within the meaning of Conduct Rule 2720 of the Financial Industry Regulatory Authority, Inc. (“FINRA”) with respect to the offering and sale of the Securities. UBS Securities LLC, in its capacity as qualified independent underwriter, is referred to herein as the “Independent Underwriter.”

1. Representations and Warranties.

(a) The Company represents and warrants to, and agrees with, each Underwriter that:

(i) The Company has prepared and filed with the Securities and Exchange Commission (the “Commission”) a registration statement on Form S-3 (File No. 333-158663), which contains a base prospectus (the “Base Prospectus”), to be used in connection with the public offering and sale of the Securities. Such registration statement, as amended, including the financial statements, exhibits and schedules thereto, including any required information deemed to be a part thereof pursuant to Rule 430B under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the “Securities Act”), and the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the “Exchange Act”), at each time of effectiveness, is called the “Registration Statement.” Any preliminary prospectus supplement to the Base Prospectus that describes the Securities and the offering thereof and is used prior to filing of the Prospectus is called, together with the Base Prospectus, a “preliminary prospectus.” The term “Prospectus” shall mean the final prospectus supplement relating to the Securities, together with the Base Prospectus, that is first filed pursuant to Rule 424(b) after the date and time that this Agreement is executed and delivered by the parties hereto (the “Execution Time”). Any reference herein to the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act; any reference to any amendment or supplement to any preliminary prospectus or the Prospectus, as the case may be, shall be deemed to refer to and include any documents filed after the date of such preliminary prospectus or Prospectus, as the case may be, under the Exchange Act, and incorporated by reference in such preliminary prospectus or Prospectus, as the case may be; and any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement. All references in this Agreement to the Registration Statement, a preliminary

prospectus, the Prospectus, or any amendments or supplements to any of the foregoing shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System (“EDGAR”).

(ii) The term “Disclosure Package” shall mean (A) the preliminary prospectus, as it may be amended or supplemented, (B) the applicable issuer free writing prospectuses as defined in Rule 433 under the Securities Act (each, an “Issuer Free Writing Prospectus”) identified in Schedule III hereto, (C) any other free writing prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package and (D) the information set forth on Schedule IV hereto which shall be orally conveyed to purchasers of the Securities sold hereunder. As of 7:00 a.m. (Eastern Standard Time) on December 4, 2009 (the “Initial Sale Time”), the Disclosure Package did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter specifically for use therein, it being understood and agreed that such information furnished by or on behalf of any Underwriter consists only of the information described as such in Section 7(b) hereof (the “Underwriter Information”).

(iii) As of the date hereof, when the Prospectus is first filed with the Commission pursuant to Rule 424(b) under the Securities Act, when any supplement or amendment to the Prospectus is filed with the Commission, at the Closing Date (as hereinafter defined) and, with respect to the Registration Statement in (A) and (B) below, as of the Initial Sale Time, (A) the Registration Statement is effective, the Registration Statement, as amended as of any such time, and the Prospectus, as amended or supplemented as of any such time, complied, complies or will comply in all material respects with the applicable provisions under the Securities Act and the Exchange Act, (B) the Registration Statement, as amended as of any such time, did not, does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading, and (C) the Prospectus, as amended or supplemented as of any such time, did not, does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representations or warranties as to the Underwriter Information. The documents which are incorporated by reference in the Registration Statement, the Disclosure Package, the preliminary prospectus or the Prospectus or from which information is so incorporated by reference, when they were filed with the Commission, complied in all material respects with the requirements under the Securities Act or the Exchange Act, as applicable, and did not, when such documents were so filed, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Commission has not issued any stop order suspending the effectiveness of the Registration Statement or any order preventing or suspending the use of the preliminary prospectus or the Prospectus, and the Company is without knowledge that any proceedings have been instituted for either purpose.

(iv) (A) At the earliest time after the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) and (B) as of the date of the execution and delivery of this Agreement (with such date being used as a determination date for purposes of this clause (B)), the Company neither was nor is an Ineligible Issuer (as defined in Rule 405 under the Securities Act).

(v) No Issuer Free Writing Prospectus (including any Final Term Sheet (as defined herein)), as of its date and at all subsequent times through the completion of the offering contemplated hereby or until any earlier date that the Company notified or notifies the Representative as described in the next sentence, included, includes or will include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, including any document incorporated by reference therein, the preliminary prospectus or the Prospectus, that had not or has not been superseded or modified. If at any time following issuance of an Issuer Free Writing Prospectus and prior to the end of the Prospectus Delivery Period (as defined below), there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, the preliminary prospectus or the Prospectus, the Company has promptly notified or will promptly notify the Representative and has promptly amended or supplemented or will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict. The foregoing two sentences do not apply to statements in or omissions from an Issuer Free Writing Prospectus based upon and in conformity with Underwriter Information.

(vi) The Company has not distributed and will not distribute, prior to the later of the Closing Date and the completion of the Underwriters' distribution of the Securities, any offering material in connection with the offering and sale of the Securities other than the Registration Statement, the preliminary prospectus, the Prospectus or any Issuer Free Writing Prospectus reviewed and consented to by the Underwriters and included in Schedule III hereto.

(vii) (A) At the time of filing the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) under the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) under the Securities Act) made any offer relating to the Securities in reliance on the exemption of Rule 163 under the Securities Act, and (D) at the Execution Time (with such date being used as the determination date for purposes of this clause (D)), the Company was and is a "well-known seasoned issuer" as defined in Rule 405 under the Securities Act. The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405 under the Securities Act, the Company has not received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to use of the automatic shelf registration statement form and the Company has not otherwise ceased to be eligible to use the automatic shelf registration statement form.

(viii) The Company has an authorized capitalization as set forth in the Registration Statement, the Prospectus and the Disclosure Package; all of the outstanding shares

of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable and are not subject to any preemptive or similar rights.

(ix) The Deposit Agreement has been duly authorized and, when validly executed and delivered by the Company, assuming due authorization, execution and delivery by the other parties thereto, will constitute a valid and binding agreement of the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other similar laws affecting the rights of creditors now or hereafter in effect, and to equitable principles that may limit the right to specific enforcement of remedies, and further subject to 12 U.S.C. §1818(b)(6)(D) (or any successor statute) and similar bank regulatory powers and to the application of principles of public policy; the Depositary Shares are entitled to the benefits of the Deposit Agreement; and such Deposit Agreement will conform to the description thereof in the Disclosure Package and the Prospectus.

(x) The Securities, the Common Equivalent Stock, the Depositary Shares and the Contingent Warrants each have been duly and validly authorized for issuance and sale, and, when the Securities are issued and delivered against payment therefor pursuant to this Agreement, the Securities, the Common Equivalent Stock and the Depositary Shares will be duly and validly issued and fully paid and non-assessable; the Contingent Warrants, upon payment for and due execution and delivery in accordance with this Agreement, the form of Contingent Warrant and the Warrant Agent Agreement, will be valid and binding obligations of the Company, subject to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other similar laws affecting the rights of creditors now or hereafter in effect, and to equitable principles that may limit the right to specific enforcement of remedies, and further subject to 12 U.S.C. §1818(b)(6)(D) (or any successor statute) and similar bank regulatory powers and to the application of principles of public policy; all corporate action required to be taken for the authorization, issue and sale of the Securities, the Common Stock Equivalent, the Depositary Shares and the Contingent Warrants has been validly and sufficiently taken, and upon deposit of the Common Equivalent Stock with the Depository pursuant to the Deposit Agreement and the due execution by the Depository of the Deposit Agreement and the Depository Receipts, in accordance with the Deposit Agreement, such Depositary Shares will represent legal and valid interests in the Common Equivalent Stock; and the Securities, the Common Equivalent Stock, the Depositary Shares and the Contingent Warrants conform to the descriptions thereof contained in the Registration Statement and Prospectus, as amended or supplemented.

(xi) The shares of Common Stock issuable upon conversion of the Common Equivalent Stock (the "Underlying Common Equivalent Shares"), as contemplated by and in the Certificate of Designations relating to the Common Equivalent Stock, will be duly and validly authorized and when issued and delivered upon the conversion of the Common Equivalent Stock will be duly and validly issued and fully paid and non-assessable; and the shares of Common Stock issuable upon the exercise of the Contingent Warrants, which can only occur during a 30-day period if the Amendment is rejected by the Company's stockholders (the "Underlying Contingent Warrant Shares" and together with the Underlying Common Equivalent Shares, the "Underlying Shares"), will be duly and validly authorized and when issued and delivered upon the exercise of the Contingent Warrants will be duly and validly issued and fully

paid and non-assessable. The Common Stock conforms to the description thereof contained in the Registration Statement and the Prospectus, as amended or supplemented.

(xii) The issue and sale of the Securities and the compliance by the Company with all of the provisions of this Agreement, the Contingent Warrants and the Deposit Agreement, and the consummation of the transactions herein contemplated, including the Stockholder Approval, and the performance of its obligations hereunder, will not contravene any provision of applicable law, the certificate of incorporation or bylaws of the Company or articles of association or bylaws of the Principal Subsidiary Bank (as defined below) or any agreement or other instrument binding upon the Company or the Principal Subsidiary Bank that is material to the Company and its subsidiaries, taken as a whole, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary; and no consent, approval, authorization (other than the Stockholder Approval of the Amendment and the filing and acceptance of the Amendment with and by the Secretary of State of the State of Delaware) or order of, or qualification with, any governmental or regulatory body is required for the performance by the Company of its obligations under this Agreement, the Contingent Warrants or the Deposit Agreement, except such as may be required by the securities or blue sky laws of the various states or foreign jurisdictions in connection with the offer and sale of the Securities.

(xiii) The Company has not received any notice from the New York Stock Exchange (“NYSE”), the London Stock Exchange (“LSE”) or the Tokyo Stock Exchange (“TSE”) regarding the delisting of its Common Stock.

(xiv) The Company has filed a preliminary listing application and all required supporting documents with the NYSE with respect to the Securities, and the Company has received no information stating that the Securities will not be authorized for trading, subject to official notice of issuance and evidence of satisfactory distribution.

(b) Each Underwriter, severally and not jointly, represents and agrees that:

(i) it has not and will not offer, sell or deliver any of the Securities, directly or indirectly, or distribute the preliminary prospectus, the Prospectus or any other offering materials (including any Issuer Free Writing Prospectus or other free writing prospectuses) in any jurisdiction except under circumstances that will result in compliance with applicable laws and regulations and that will not impose any obligations on the Company except as set forth herein; and

(ii) it will comply in all material respects with the selling restrictions set forth in the Prospectus under the caption “Underwriting—Selling Restrictions.”

2. Purchase and Sale. Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to issue and sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company the number of Securities set forth opposite such Underwriter’s name in Schedule II hereto, subject to adjustment in accordance with Section 8 hereof, in each case at the purchase

price of \$14.625 per Security (the "Purchase Price"). Each of the Underwriters agrees that it will orally convey to purchasers of the Securities sold hereunder the information set forth on Schedule IV hereto.

3. Delivery and Payment. The Company shall deliver, or cause to be delivered, the Securities to the Representative for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representative of the Purchase Price thereof in federal (same-day) funds or wire transfer to an account previously designated to the Representative by the Company (or, if agreed to by the Representative and the Company, by certified or official bank check or checks), by causing Computershare Trust Company, N.A., as registrar, to register the Securities in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"), or such other nominee as DTC may designate, and shall cause DTC to credit the Securities to the account of Merrill Lynch, Pierce, Fenner & Smith Incorporated at DTC.

The time and date of such delivery and payment, with respect to the Securities, shall be 12:00 noon, New York City time (the "Closing Time") on the fourth business day (the "Closing Date") following the date of the Prospectus or such other time and date as the Representative and the Company may agree upon in writing.

4. Agreements. The Company agrees with the several Underwriters that:

(a) During the period beginning at the Initial Sale Time and ending on the later of five business days after the Closing Date or such date, as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered in connection with sales by an Underwriter or dealer (except for delivery requirements imposed because such Underwriter or dealer is an affiliate of the Company), including in circumstances where such requirement may be satisfied pursuant to Rule 172 (the "Prospectus Delivery Period"), the Company will not file any amendment to the Registration Statement or supplement to the Base Prospectus or the Disclosure Package (including the Prospectus) (other than with respect to a document filed with the Commission pursuant to the Exchange Act which will be incorporated by reference in the Registration Statement, the preliminary prospectus and Prospectus that is not filed to correct a misstatement, an omission or non-compliance that is the subject of a notice delivered to the Underwriters pursuant to paragraph (b) below (a "Periodic Filing")) unless the Company has furnished the Representative a copy for its review prior to filing and will not file any such proposed amendment or supplement to which the Representative reasonably objects. Subject to the foregoing sentence, the Company will cause the Prospectus to be filed with the Commission pursuant to Rule 424 via EDGAR. The Company will advise the Representative promptly (i) when the preliminary prospectus and the Prospectus shall have been filed with the Commission pursuant to Rule 424, (ii) when any amendment to the Registration Statement or the Disclosure Package relating to the Securities shall have become effective, (iii) of any request by the Commission for any amendment of the Registration Statement or amendment of or supplement to the Prospectus or the Disclosure Package or for any additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose and (v) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any

proceeding for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order and, if issued, to obtain as soon as possible the withdrawal thereof.

(b) If, at any time during the Prospectus Delivery Period, except with respect to any such delivery requirement imposed upon an affiliate of the Company in connection with any secondary market sales, any event occurs as a result of which the Disclosure Package or the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in light of the circumstances under which they were made or then prevailing, as the case may be, not misleading, or if it shall be necessary to amend or supplement the Disclosure Package or the Prospectus to comply with the Securities Act or the Exchange Act, the Company promptly will prepare and file with the Commission, subject to the first sentence of paragraph (a) of this Section 4, an amendment or supplement which will correct such statement or omission or an amendment or supplement which will effect such compliance (including, if consented to by the Underwriters, by means of an Issuer Free Writing Prospectus), and will give immediate notice, and confirm in writing, to the Underwriters to cease the solicitation of offers to purchase the Securities, and furnish to the Underwriters a reasonable number of copies of such amendment or supplement.

(c) The Company will make generally available to its security holders and to the Representative as soon as practicable, but not later than 60 days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the "effective date" (as defined in said Rule 158) of the Registration Statement.

(d) The Company will furnish to the Representative and counsel for the Underwriters, without charge, copies of the Registration Statement (including exhibits thereto) and each amendment thereto which shall become effective on or prior to the Closing Date and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Securities Act, as many copies of the preliminary prospectus or the Prospectus and any amendments thereof and supplements thereto as the Representative may reasonably request. The Company will pay the expenses of printing all documents relating to the offering.

(e) The Company will arrange for the qualification of the Securities for sale under the laws of such jurisdictions as the Representative may reasonably designate, will maintain such qualifications in effect so long as required for the distribution of the Securities and will arrange for the determination of the legality of the Securities for purchase by investors; provided, however, that the Company shall not be required to qualify to do business in any jurisdiction where it is not now so qualified or to take any action which would subject it to general or unlimited service of process in any jurisdiction where it is not now so subject.

(f) During the period commencing on the date hereof and ending 60 days after the date of the Prospectus (the "Lock-Up Period"), the Company will not, without the prior written consent of the Representative, (1) offer or sell in a public offering or an offering pursuant to Rule 144A under the Securities Act, or pledge, any shares of Common Stock, any shares of convertible preferred stock, or any capital stock or other securities, including units or

debt securities, convertible into, or exercisable for, shares of Common Stock, or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash, or otherwise. The foregoing restriction shall not apply to (i) the issuance of securities pursuant to or in connection with any employment contract, benefit plan or similar arrangement with or for the benefit of employees, officers, directors or consultants adopted before or after the date hereof, (ii) sales or issuances of securities pursuant to contractually binding requirements or agreements currently in effect, (iii) any issuance or commitment to issue securities in connection with any merger or acquisition transaction, (iv) any issuance that is the result of an exchange or conversion of any class or series of capital stock for any other series of capital stock, or (v) any issuance, offer or sale of preferred stock, capital securities and related junior subordinated notes, non-convertible debt or hybrid securities or units that are intended to qualify for Tier 1 capital treatment for regulatory purposes or to receive favorable equity credit from any rating agency.

(g) The Company will prepare a final term sheet containing a description of the Securities and the offering contemplated hereby, in a form approved by the Representative and contained in Exhibit A to Schedule III of this Agreement, and will file the such term sheet pursuant to Rule 433(d) under the Securities Act as promptly as possible, but in any case not later than the time required by such rule (such term sheet, the "Final Term Sheet").

(h) The Company represents that it has not made and agrees that, unless it obtains the prior written consent of the Representative, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405 under the Securities Act) required to be filed by the Company with the Commission or retained by the Company under Rule 433 under the Securities Act; provided that the prior written consent of the Representative shall be deemed to have been given in respect of the Issuer Free Writing Prospectuses included in Schedule III hereto. Any such free writing prospectus consented to by the Representative is hereinafter referred to as a "Permitted Free Writing Prospectus." The Company agrees that (i) it has treated and will treat as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, and (ii) it has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 under the Securities Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping. The Company consents to the use by any Underwriter of a free writing prospectus that (a) is not an "issuer free writing prospectus" as defined in Rule 433, and (b) contains only (i) information describing the preliminary terms of the Securities or their offering, (ii) information permitted by Rule 134 under the Securities Act or (iii) information that describes the final terms of the Securities or their offering and that is included in the Final Term Sheet of the Company contemplated in paragraph (g) above.

(i) If immediately prior to the third anniversary (the "Renewal Deadline") of the initial effective date of the Registration Statement, any of the Securities remain unsold by the Underwriters, the Company will file prior to the Renewal Deadline, if it has not already done so and is eligible to do so, a new automatic shelf registration statement relating to the Securities, in a form satisfactory to the Representative. If the Company is no longer eligible to file an automatic shelf registration statement, the Company will file prior to the Renewal



Deadline, if it has not already done so, a new shelf registration statement relating to the Securities, in a form satisfactory to the Representative, and will use its reasonable efforts to cause such registration statement to be declared effective within 60 days after the Renewal Deadline. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Securities to continue as contemplated in the expired registration statement relating to the Securities. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be.

(j) If at any time when Securities remain unsold by the Underwriters the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Representative, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the Securities, in a form satisfactory to the Representative, (iii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective and (iv) promptly notify the Representative of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(k) The Company agrees to pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) under the Securities Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the Securities Act.

(l) In connection with the offering contemplated hereby, the Company agrees not to take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities; provided that the Company may repurchase shares of its Common Stock in compliance with the safe harbor provided by Rule 10b-18 under the Exchange Act and in compliance with Regulation M under the Exchange Act.

(m) The Company agrees to use its best efforts to list, subject to notice of issuance, the Securities and the Underlying Shares on the NYSE and to maintain such listing.

(n) The Company agrees to maintain a transfer agent and a registrar for the Common Stock.

(o) The Company shall use its reasonable best efforts to obtain the Stockholder Approval as soon as practicable, but in no event later than 105 days after the Closing Date, and to file the Amendment as soon as practicable thereafter with Secretary of State of the State of Delaware. If the Company is unable to obtain the Stockholder Approval within 105 days of the Closing Date, it shall use its reasonable best efforts to continue to seek the Stockholder Approval by convening a meeting of the Company's stockholders at least as frequently as every six months until such Stockholder Approval is obtained.

5. Conditions to the Obligations of the Underwriters. The obligations of the Underwriters to purchase the Securities shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the date hereof, as of the date of the effectiveness of any amendment to the Registration Statement filed prior to the Closing Date (including the filing of any document incorporated by reference therein) and as of the Closing Date, to the accuracy of the statements of the Company made in any certificates furnished pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) For the period from and after effectiveness of this Agreement and prior to the Closing Time on the Closing Date:

(i) no stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment to the Registration Statement, shall be in effect and no proceedings for such purpose shall have been instituted or threatened by the Commission, and the Company shall not have received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to use of the automatic shelf registration statement form (unless the Securities are duly registered in the manner contemplated by Rule 401(g)(2) to the satisfaction of the Representative prior to the Closing Date);

(ii) the Company shall have filed the preliminary prospectus and the Prospectus with the Commission (including the information required by Rule 430B under the Securities Act) in the manner and within the time period required by Rule 424(b) under the Securities Act; or the Company shall have filed a post-effective amendment to the Registration Statement containing the information required by such Rule 430B, and such post-effective amendment shall have become effective (if not automatically effective under the rules of the Commission);

(iii) the Final Term Sheet, and any other material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act, shall have been filed with the Commission within the applicable time periods prescribed for such filings under such Rule or, to the extent applicable, under Rule 164(b);

(iv) FINRA shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements;

(v) the Securities and the Underlying Shares shall have been approved for listing on the NYSE, subject to official notice of issuance; and

(vi) the lock-up letters, each substantially in the form of Exhibit A hereto, executed by certain officers of the Company relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date.

(b) The Company shall have furnished to the Underwriters the opinion of McGuireWoods LLP, counsel for the Company, dated the Closing Date and given as of the Closing Time on the Closing Date, to the effect of paragraphs (i) and (v) through (xii) below, and the opinion of the General Counsel of the Company (or such other attorney, reasonably

acceptable to counsel to the Underwriters, who exercises general supervision or review in connection with a particular securities law matter for the Company), dated the Closing Date, to the effect of paragraphs (ii) through (iv) below:

(i) the Company is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware, has the corporate power and authority to own its properties and conduct its business as described in the Disclosure Package and the Prospectus, and is duly registered as a bank holding company under the Bank Holding Company Act of 1956, as amended; Bank of America, N.A. (the "Principal Subsidiary Bank") is a national banking association formed under the laws of the United States and authorized thereunder to transact business;

(ii) each of the Company and the Principal Subsidiary Bank is qualified or licensed to do business as a foreign corporation in any jurisdiction in which such counsel has knowledge that the Company or the Principal Subsidiary Bank, as the case may be, is required to be so qualified or licensed;

(iii) all the outstanding shares of capital stock of the Principal Subsidiary Bank have been duly and validly authorized and issued and are fully paid and (except as provided in 12 U.S.C. §55, as amended) nonassessable, and, except as otherwise set forth in the Disclosure Package and the Prospectus, all outstanding shares of capital stock of the Principal Subsidiary Bank (except directors' qualifying shares) are owned, directly or indirectly, by the Company free and clear of any perfected security interest and such counsel is without knowledge of any other security interests, claims, liens or encumbrances;

(iv) such counsel is without knowledge that there is (1) any pending or threatened action, suit or proceeding before or by any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries, of a character required to be disclosed in the Registration Statement, the Disclosure Package or the Prospectus which is omitted or not adequately disclosed therein, or (2) any franchise, contract or other document of a character required to be described in the Registration Statement, the Disclosure Package or the Prospectus, or to be filed as an exhibit to the Registration Statement, which is not so described or filed as required;

(v) the Deposit Agreement, the Securities, the Depositary Shares, the Common Equivalent Stock, the Contingent Warrants and the Common Stock conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus;

(vi) the Company has filed a preliminary listing application and all required supporting documents with respect to the Securities and the Underlying Shares with the NYSE, and such counsel has received no information stating that the Securities and the Underlying Shares will not be authorized for listing, subject to official notice of issuance and evidence of satisfactory distribution;

(vii) the Registration Statement became effective under the Securities Act automatically upon its filing; no stop order suspending the effectiveness of the Registration

Statement, or any post-effective amendment to the Registration Statement, has been issued, and such counsel is without knowledge that any proceeding for that purpose has been instituted or threatened, or that the Company has received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to the use of the automatic shelf registration statement form; and the Registration Statement, the Disclosure Package and the Prospectus and each amendment thereof or supplement thereto (other than the financial statements and other financial and statistical information contained therein or incorporated by reference therein, as to which such counsel need express no opinion) comply as to form in all material respects with the applicable requirements under the Securities Act and the Exchange Act;

(viii) this Agreement and the Deposit Agreement each have been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by the other parties thereto, each constitutes a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other similar laws affecting the rights of creditors now or hereafter in effect, and to equitable principles that may limit the right to specific enforcement of remedies, and except insofar as the enforceability of the indemnity and contribution provisions contained in this Agreement and the Deposit Agreement may be limited by federal and state securities laws, and further subject to 12 U.S.C. §1818(b)(6)(D) (or any successor statute) and similar bank regulatory powers and to the application of principles of public policy;

(ix) no consent, approval, authorization (other than the Stockholder Approval of the Amendment and the filing and acceptance of the Amendment with and by the Secretary of State of the State of Delaware) or order of any court or governmental agency or body in the United States is necessary or required on behalf of the Company for the consummation of the transactions contemplated herein, except such as have been obtained under the Securities Act and such as may be required under the blue sky, state securities or insurance or similar laws of the United States in connection with the purchase and distribution of the Securities by the Underwriters and such other approvals (specified in such opinion) as have been obtained;

(x) the Securities have been duly and validly authorized for issuance and sale, and, when issued and delivered against payment therefore pursuant to this Agreement, the Securities will be duly and validly issued and fully paid and nonassessable; and all corporate action required to be taken for the authorization, issue and sale of the Securities has been validly and sufficiently taken;

(xi) the shares of Common Equivalent Stock have been duly authorized and, when paid for as contemplated herein, will be duly and validly issued, fully paid and nonassessable;

(xii) the Depositary Shares have been duly and validly authorized, and, when issued and delivered against payment therefor pursuant to this Agreement, the Depositary Shares will be duly and validly issued and fully paid and non-assessable; and all corporate action required to be taken for the authorization of the Depositary Shares has been validly and

sufficiently taken and the Depositary Shares represent legal and valid interests in the Common Equivalent Stock;

(xiii) the Contingent Warrants have been duly authorized and, upon payment for, due execution and delivery in accordance with this Agreement, the form of Contingent Warrant and the Warrant Agent Agreement, the Warrants will be valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other similar laws affecting the rights of creditors now or hereafter in effect, and to equitable principles that may limit the right to specific enforcement of remedies, and except insofar as the enforceability of the indemnity and contribution provisions contained in this Agreement and the Warrant Agent Agreement may be limited by federal and state securities laws, and further subject to 12 U.S.C. §1818(b)(6)(D) (or any successor statute) and similar bank regulatory powers and to the application of principles of public policy;

(xiv) the Underlying Shares have been duly authorized, and when issued in accordance with the terms and conditions of the Common Equivalent Stock or the Contingent Warrants, as applicable, will be duly issued, fully paid and nonassessable;

(xv) neither the issuance and sale of the Securities, the Depositary Shares, the Common Equivalent Stock, the Contingent Warrants and the Underlying Shares, if issued, nor the consummation of any other of the transactions herein contemplated nor the fulfillment of the terms hereof, in accordance with the terms and conditions of the Securities, the Depositary Shares, the Common Equivalent Stock, the Contingent Warrants and the Underlying Shares, will conflict with, result in a breach of, or constitute a default under (1) the certificate of incorporation or by-laws of the Company, each as amended to date, (2) the terms of any indenture or other material agreement or instrument known to such counsel and to which the Company or the Principal Subsidiary Bank is a party or bound, or (3) any order, law or regulation known to such counsel to be applicable to the Company or the Principal Subsidiary Bank of any court, regulatory body, administrative agency, governmental body or arbitrator having jurisdiction over the Company or the Principal Subsidiary Bank; and

(xvi) such counsel is without knowledge of any rights to the registration of securities of the Company under the Registration Statement which have not been waived by the holders of such rights or which have not expired by reason of lapse of time following notification of the Company's intention to file the Registration Statement.

In rendering such opinion, but without opining in connection therewith, such counsel also shall state that, although it expresses no view as to portions of the Registration Statement, the Disclosure Package, or the Prospectus consisting of financial statements and other financial, accounting and statistical information and it has not independently verified, is not passing upon and assumes no responsibility for, the accuracy, completeness or fairness of the statements contained in the Registration Statement, the Disclosure Package, or the Prospectus or any amendment or supplement thereto (other than as stated in (v) above), it has no reason to believe that such remaining portions of the Registration Statement or any amendment thereto as of the time it became effective, as of the Initial Sale Time or as of the date of such opinion, contained any untrue statement of a material fact or omitted to state any material fact required to be stated

therein or necessary to make the statements therein not misleading or that, subject to the foregoing with respect to financial statements and other financial, accounting and statistical information, the Disclosure Package, taken as a whole, as of the Initial Sale Time or as of the date of such opinion, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statement therein, in light of the circumstances under which they were made, not misleading, or that the Prospectus, as amended or supplemented, as of its date or as of the date of such opinion contained or contains any untrue statement of a material fact or omitted or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Such counsel also need not pass upon nor assume any responsibility for ascertaining whether or when any of the information contained in each Disclosure Package was conveyed to any purchaser of the Securities.

In rendering such opinion, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the States of North Carolina and New York, the United States, or the General Corporation Law of the State of Delaware to the extent deemed proper and specified in such opinion, or upon the opinion of counsel of good standing believed to be reliable and who are satisfactory to counsel for the Underwriters; and (B) as to matters of fact, to the extent deemed proper, on certificates of responsible officers of the Company and its subsidiaries and public officials.

(c) The Underwriters shall have received from Morrison & Foerster LLP, counsel for the Underwriters, such opinion, dated the Closing Date, with respect to the issuance and sale of the Securities, the Registration Statement, the Disclosure Package and the Prospectus and any other related matters as the Representative may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(d) The Underwriters shall have received from Richards, Layton and Finger, special Delaware counsel for the Company, such opinion, dated the Closing Date, with respect to certain matters of Delaware law, to the effect that (i) the Securities have been duly and validly authorized for issuance and sale, and, when issued and delivered against payment therefore pursuant to this Agreement, the Securities will be duly and validly issued and fully paid and nonassessable; and (ii) all corporate action required to be taken for the authorization, issue and sale of the Securities has been validly and sufficiently taken.

(e) The Company shall have furnished to the Underwriters a certificate of the Company, signed by any Senior Vice President or Treasurer or any other authorized officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Disclosure Package and the Prospectus and this Agreement and they are without knowledge that:

(i) the representations and warranties of the Company in this Agreement are not true and correct with the same force and effect as though expressly made at and as of the Closing Date and the Company has not performed or complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date;

(ii) any stop order suspending the effectiveness of the Registration Statement has been issued or any proceedings for that purpose have been instituted or threatened by the Commission; and

(iii) since the date of the most recent financial statements included in the Disclosure Package and the Prospectus, there has been any material adverse change or any development involving a prospective material adverse change in the condition (financial or other), earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Prospectus.

(f) At the time this Agreement is executed, PricewaterhouseCoopers LLP shall have furnished to the Underwriters a letter or letters, dated as of the date of this Agreement, in form and substance satisfactory to the Representative, confirming that the response, if any, to Item 10 of the Registration Statement is correct insofar as it relates to them and stating in effect that:

(i) They are an independent registered public accounting firm with respect to the Company within the meaning under the Securities Act and the applicable rules and regulations thereunder adopted by the Commission and the Public Company Accounting Oversight Board (United States).

(ii) In their opinion, the consolidated financial statements of the Company and its subsidiaries audited by them and included or incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus comply as to form in all material respects with the applicable accounting requirements under the Securities Act and the Exchange Act and the related rules and regulations adopted by the Commission.

(iii) On the basis of procedures (but not an audit in accordance with generally accepted auditing standards) consisting of:

(a) Reading the minutes of the meetings of the stockholders, the board of directors, executive committee and audit committee of the Company and the boards of directors of the Principal Subsidiary Bank as set forth in the minute books through a specified date not more than five business days prior to the date of delivery of such letter;

(b) Performing the procedures specified by the American Institute of Certified Public Accountants for a review of interim financial information as described in Statement of Accounting Standards No. 100, Interim Financial Information, on the unaudited condensed consolidated interim financial statements of the Company and its consolidated subsidiaries included or incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus and reading the unaudited interim financial data, if any, for the period from the date of the latest balance sheet included or incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus to the date of the latest available interim financial data; and

(c) Making inquiries of certain officials of the Company who have responsibility for financial and accounting matters regarding the specific items for which representations are requested below;

nothing has come to their attention as a result of the foregoing procedures that caused them to believe that:

(1) the unaudited condensed consolidated interim financial statements, included or incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus, do not comply as to form in all material respects with the applicable accounting requirements of the Exchange Act and the published rules and regulations thereunder;

(2) any material modifications should be made to the unaudited condensed consolidated interim financial statements, included or incorporated by reference in the Registration Statement, the preliminary prospectus, and the Prospectus, for them to be in conformity with generally accepted accounting principles;

(3) (i) at the date of the latest available interim financial data and at the specified date not more than five business days prior to the date of the delivery of such letter, there was any change in the common stock, preferred stock and additional paid-in capital or the consolidated long-term debt (other than scheduled repayments of such debt) of the Company and the subsidiaries on a consolidated basis as compared with the amounts shown in the latest balance sheet included or incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus or (ii) for the period from the date of the latest available financial data to a specified date not more than five business days prior to the delivery of such letter, there was any change in the common stock, preferred stock and additional paid-in capital or the consolidated long-term debt (other than scheduled repayments of such debt) of the Company and the subsidiaries on a consolidated basis, except in all instances for changes or decreases which the Registration Statement, the preliminary prospectus, and the Prospectus discloses have occurred or may occur, or PricewaterhouseCoopers LLP shall state any specific changes or decreases.

(iv) The letter shall also state that PricewaterhouseCoopers LLP has carried out certain other specified procedures, not constituting an audit, with respect to certain amounts, percentages and financial information which are included or incorporated by reference in the Registration Statement, the preliminary prospectus and the Prospectus and which are specified by the Representative and agreed to by PricewaterhouseCoopers LLP, and has found such amounts, percentages and financial information to be in agreement with the relevant accounting, financial and other records of the Company and its subsidiaries identified in such letter.



In addition, on the Closing Date, PricewaterhouseCoopers LLP shall have furnished to the Underwriters a letter or letters, dated the Closing Date, in form and substance satisfactory to the Underwriters, to the effect set forth in this paragraph (e).

(g) Subsequent to the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, there shall not have been (i) any change or decrease specified in the letter or letters referred to in paragraph (e) of this Section 5 or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or other), earnings, business or properties of the Company and its subsidiaries, taken as a whole, the effect of which, in any case referred to in clause (i) or (ii) above, is, in the judgment of the Representative, so material and adverse as to make it impractical or inadvisable to proceed with the offering or the delivery of the Securities as contemplated by the Registration Statement, the Disclosure Package and the Prospectus.

(h) On or prior to the Closing Date, the Company shall have furnished to the Representative such further information, certificates and documents as the Underwriters may reasonably request.

(i) On or after the date hereof and prior to the Closing Date (i) no downgrading shall have occurred in the rating accorded the Company's debt securities by any "nationally recognized statistical rating organization," as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities.

(j) The Underwriters shall have received on the Closing Date a certificate of Computershare Trust Company, N.A. with respect to its role as transfer agent and registrar for the Securities and establishing book-entry positions in the Securities.

(k) The Deposit Agreement shall have been duly authorized, executed and delivered, in a form reasonably satisfactory to the Representative.

(l) The Warrant Agent Agreement shall have been duly authorized, executed and delivered, in a form reasonably satisfactory to the Representative.

(m) The Securities to be sold by the Company at such time of delivery shall have been authorized for listing, subject to notice of issuance, on the New York Stock Exchange.

(n) There shall not have come to the Representative's attention any facts that would cause the Representative to believe that the Disclosure Package, as of the Initial Sale Time, or the Prospectus, at the time it was required to be delivered to a purchaser of the Securities, included any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at the time of such delivery, not misleading.

(o) As soon as practicable after the closing of the transaction contemplated herein, the Company shall repurchase all outstanding shares of its Fixed Rate

Cumulative Perpetual Preferred Stock, Series N, its Fixed Rate Cumulative Perpetual Preferred Stock, Series Q and its Fixed Rate Cumulative Perpetual Preferred Stock, Series R, all issued to the Treasury Department in connection with the Company's participation in the U.S. Troubled Asset Relief Program (Series N, Series Q and Series R are collectively referred to herein as the "TARP Preferred Stock").

(p) The Underwriters shall have received on or prior to the Closing Date a copy of the letter to the Company whereby the Federal Reserve Board approves the Company's repayment plan for the TARP Preferred Stock.

If any of the conditions specified in this Section 5 shall not have been fulfilled in all material respects when and as provided in this Agreement (or such conditions have not been waived by the Representative on behalf of the Underwriters), or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Underwriters and their counsel, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representative. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

6. Payment of Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing, delivery to the Underwriters and filing of the Registration Statement, any Issuer Free Writing Prospectus, the preliminary prospectus and the Prospectus as originally filed and of each amendment or supplement thereto, (ii) the copying of this Agreement, (iii) the preparation, issuance and delivery of the certificates for the Securities to the Underwriters, including capital duties, stamp duties and transfer taxes, if any, payable upon issuance of any of the Securities, the sale of the Securities to the Underwriters and the fees and expenses of any transfer agent or trustee for the Securities, (iv) the fees and expenses of counsel to any such transfer agent or trustee, (v) the fees and disbursements of the Company's counsel and accountants, (vi) the qualification of the Securities under state securities laws in accordance with the provisions of Section 4(e), including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of any blue sky survey, (vii) the printing and delivery to the Underwriters of copies of any blue sky survey, (viii) the fees of FINRA (including the fees and expenses of UBS Securities LLC acting as "qualified independent underwriter" within the meaning of NASD Rule 2720 of FINRA), (ix) the fees and expenses of any depository and any nominee thereof in connection with the Depository Shares and of any warrant agent in connection with the Contingent Warrants, (x) the fees and expenses, including legal fees and expenses, of the Independent Underwriter (which will be paid from the underwriting syndicate account) and (xi) any listing fees relating to the listing of the Securities and the Underlying Shares.

If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 5 hereof is not satisfied or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally upon demand for all out-

of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities.

7. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless each Underwriter and each person, if any, who controls or is under common control with any Underwriter within the meaning under the Securities Act and the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Underwriter or such controlling person may become subject, insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the Disclosure Package or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and to reimburse each Underwriter and each such controlling person for any and all expenses (including the fees and disbursements of counsel chosen by the Representative) as such expenses are reasonably incurred by such Underwriter or such controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with the Underwriter Information. The indemnity agreement set forth in this Section 7(a) shall be in addition to any liabilities that the Company may otherwise have.

Without limitation of and in addition to its obligations under the other paragraphs of this Section 7, the Company agrees to indemnify, defend and hold harmless the Independent Underwriter and each person, if any, who controls or is under common control with the Independent Underwriter within the meaning under the Securities Act and the Exchange Act, and the successors and assigns of all of the foregoing persons, from and against any loss, damage, expense, liability or claim (including the reasonable cost of investigation) which, jointly or severally, the Independent Underwriter or any such person may incur, insofar as such loss, damage, expense, liability or claim arises out of or is based upon the Independent Underwriter's acting as a "qualified independent underwriter" (within the meaning of Conduct Rule 2720 of FINRA) in connection with the offering contemplated by this Agreement, and the Company agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, damage, expense, liability or claim. Section 7(c) shall apply equally to any action or proceeding brought against the Independent Underwriter or any such person in respect of which indemnity may be sought against the Company pursuant to the immediately preceding sentence, except that the Company shall be liable for the expenses of one separate counsel (in addition to any local counsel) for the Independent Underwriter and any such person, separate and in addition to

counsel for the persons who may seek indemnification pursuant to the first paragraph of this Section 7(a), in any such action or proceeding.

(b) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning under the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, or any such director, officer or controlling person may become subject, insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the Base Prospectus, the preliminary prospectus, or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, and only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Base Prospectus, the preliminary prospectus or the Prospectus (or any amendment or supplement thereto), in reliance upon and in conformity with the Underwriter Information; and to reimburse the Company, or any such director, officer or controlling person for any legal and other expense reasonably incurred by the Company, or any such director, officer or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The Company hereby acknowledges that the only information that the Underwriters have furnished to the Company expressly for use in the Registration Statement, the Disclosure Package or the Prospectus (or any amendment or supplement thereto) are the names of the Underwriters, the sentence relating to concessions in the third paragraph and the statements set forth in the eighth, ninth and tenth paragraphs, all under the caption "Underwriting" in the preliminary prospectus and the Prospectus. The indemnity agreement set forth in this Section 7(b) shall be in addition to any liabilities that each Underwriter may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 7, notify the indemnifying party in writing of the commencement thereof; but the failure to so notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any liability other than the indemnification obligation provided in paragraph (a) or (b) above. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel satisfactory to such indemnified party; provided, however, that if the

defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 7 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence (it being understood, however, that, except as provided in the second paragraph of Section 7(a), the indemnifying party shall not be liable for the expenses of more than one separate counsel (other than local counsel approved by the Representative), representing the indemnified parties who are parties to such action; or (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) The indemnifying party under this Section 7 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(e) If the indemnification provided for in Sections 7(a) through (d) is for any reason unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one

hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, and the total underwriting discount received by the Underwriters, in each case as set forth on the front cover page of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on such cover. The relative benefits received by the Independent Underwriter in its capacity as “qualified independent underwriter” (within the meaning of Conduct Rule 2720 of FINRA) shall be deemed to be equal to the compensation received by the Independent Underwriter for acting in such capacity. The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact or any such inaccurate or alleged inaccurate representation or warranty relates to information supplied by the Company, on the one hand, or the Underwriters, on the other hand, and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 7(c), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 7(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 7; provided, however, that no additional notice shall be required with respect to any action for which notice has been given in accordance with Section 7(c) for purposes of indemnification. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7(e) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 7(e).

Notwithstanding the provisions of this Section 7(e), no Underwriter shall be required to contribute any amount in excess of the underwriting discounts received by such Underwriter in connection with the Securities underwritten by it, and the Independent Underwriter, in its capacity as “qualified independent underwriter” (within the meaning of Conduct Rule 2720 of FINRA), shall in no event be required to contribute any amount in excess of the amount of compensation received by the Independent Underwriter for acting in such capacity exceeds the amount of any damage which the Independent Underwriter has otherwise been required to pay by reason of the Independent Underwriter’s acting in such capacity in connection with the offering contemplated by this Agreement. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) under the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters’ obligations to contribute pursuant to this Section 7(e) are several, and not joint, in proportion to their respective underwriting commitments as set forth opposite their names in Schedule II. For purposes of this Section 7(e), each person, if any, who controls an Underwriter within the meaning under the Securities Act and the Exchange Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement and each person, if any, who controls the

Company within the meaning under the Securities Act and the Exchange Act shall have the same rights to contribution as the Company. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties under this paragraph (e), notify such party or parties from whom contribution may be sought, as contemplated by the preceding paragraph. However, the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any other obligation it or they may have hereunder or otherwise than under this paragraph (e).

8. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of Securities set forth opposite their names in Schedule II hereto bear to the aggregate amount of Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; provided, however, that in the event that the aggregate amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate amount of Securities set forth in Schedule II hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such non-defaulting Underwriters do not purchase all the Securities, this Agreement will terminate without liability to any non-defaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 8, the Closing Date shall be postponed for such period, not exceeding seven days, as the Representative shall determine in order that the required changes in the Registration Statement, the Disclosure Package, the preliminary prospectus and the Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any non-defaulting Underwriter for damages occasioned by its default hereunder.

9. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representative, by notice given to the Company prior to delivery of and payment for the Securities, if prior to such time (i) trading in securities generally, or in the Common Stock of the Company listed on the NYSE shall have been suspended or limited or minimum prices shall have been established on such exchange, or (ii) a banking moratorium shall have been declared by Federal or New York State authorities or a material disruption in the commercial banking or securities settlement or clearance services in the United States shall have occurred, or (iii) there shall have occurred any outbreak or material escalation of hostilities or other calamity or crisis (in the United States or elsewhere) the effect of which on the financial markets of the United States is such as to make it, in the judgment of the Representative, impracticable to market the Securities.

10. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters and the Independent Underwriter set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Independent Underwriter or the Company or any of the officers,

directors or controlling persons referred to in Section 7 hereof, and will survive delivery of and payment for the Securities. The provisions of Section 6 and 7 hereof and this Section 10 shall survive the termination or cancellation of this Agreement.

11. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representative, will be mailed, delivered or faxed and confirmed to it, at the address specified in Schedule I hereto, with a copy to: Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104-0050, Attn: James R. Tanenbaum; or if sent to the Independent Underwriter, will be mailed, delivered or faxed and confirmed to it at UBS Securities LLC, 299 Park Avenue, New York, New York 10171-0026, Attn: Syndicate Department; or, if sent to the Company, will be mailed, delivered or faxed and confirmed to it at Bank of America Corporation, Bank of America Corporate Center, Corporate Treasury - Governance and Control, NC1-007-07-13, 100 North Tryon Street, Charlotte, North Carolina 28255, with a copy to each of: Bank of America Corporation, Legal Department, NC1-002-29-01, 101 South Tryon Street, Charlotte, North Carolina 28255, Attn: General Counsel; and McGuireWoods LLP, 201 North Tryon Street, Charlotte, North Carolina 28202, Attn: Richard W. Viola.

12. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 7 hereof, and no other person will have any right or obligation hereunder.

13. No Fiduciary Duties: Agreement Complete.

(a) The Company acknowledges and agrees that: (i) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters and the Independent Underwriter, on the other hand, and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (ii) in connection with each transaction contemplated hereby and the process leading to such transaction each Underwriter and Independent Underwriter is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary of the Company, or its affiliates, stockholders, creditors or employees or any other party; (iii) no Underwriter has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Company with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether such Underwriter or Independent Underwriter has advised or is currently advising the Company on other matters) and no Underwriter or Independent Underwriter has any obligation to the Company with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement; (iv) the several Underwriters and the Independent Underwriter and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and that the several Underwriters and the Independent Underwriter have no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Underwriters and the Independent Underwriter have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company has



consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

(b) This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the several Underwriters and the Independent Underwriter, or any of them, with respect to the subject matter hereof. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the several Underwriters and the Independent Underwriter with respect to any breach or alleged breach of agency or fiduciary duty.

14. Applicable Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to principles of conflict of laws.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Underwriters and the Independent Underwriter.

Very truly yours,

BANK OF AMERICA CORPORATION

By: /s/ B. KENNETH BURTON, JR.

Name: B. Kenneth Burton, Jr.  
Title: Senior Vice President

The foregoing Agreement is hereby confirmed and accepted as of the date specified in Schedule I hereto.

By: MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: /s/ MICHAEL RUBINOFF

Name: Michael Rubinoff  
Title: Managing Director

For itself and the other several Underwriters, if any, named in Schedule II to the foregoing Agreement.

UBS SECURITIES LLC  
as Qualified Independent Underwriter and Co-Manager

By: /s/ JAMES M. SPENCER

Name: James M. Spencer  
Title: Managing Director

By: /s/ GARY D. HOWE

Name: Gary D. Howe  
Title: Managing Director

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**SCHEDULE I**

Registration Statement No. 333-158663

Underwriting Agreement dated December 3, 2009

Representative: Merrill Lynch, Pierce, Fenner & Smith Incorporated

Address of Representative: c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated  
4 World Financial Center  
New York, NY 10080  
Attention: Thomas Yang

Other provisions: None

Closing Date, Closing Time and Location: December 9, 2009, 12:00 noon, New York City time, Office of Morrison & Foerster LLP

**SCHEDULE II**

<b>Underwriters</b>	<b>Number of Securities to be Purchased</b>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	805,480,523
UBS Securities LLC	64,935,065
Cantor Fitzgerald & Co.	25,974,026
Deutsche Bank Securities Inc.	25,974,026
Goldman, Sachs & Co.	25,974,026
Keefe, Bruyette & Woods, Inc.	25,974,026
Mizuho Securities USA Inc.	25,974,026
Morgan Stanley & Co. Incorporated	25,974,026
SG Americas Securities, LLC	25,974,026
Santander Investment Securities Inc.	25,974,026
Stifel, Nicolaus & Company, Incorporated	25,974,026
UniCredit Capital Markets, Inc.	25,974,026
Wells Fargo Securities, LLC	25,974,026
Sanford C. Bernstein & Co., LLC	12,987,013
CCB International Capital Limited	12,987,013
Cowen and Company, LLC	12,987,013
Daiwa Securities America Inc.	12,987,013
ICBC International Securities Limited	12,987,013
National Australia Bank Limited	12,987,013
Broadpoint Capital, Inc.	6,493,506
KeyBanc Capital Markets Inc.	6,493,506
Macquarie Capital (USA) Inc.	6,493,506
RBS Securities Inc.	6,493,506
Samuel A. Ramirez & Co., Inc.	6,493,506
Samsung Securities Co., Ltd.	6,493,506
Southwest Securities, Inc.	6,493,506
SunTrust Robinson Humphrey, Inc.	6,493,506
<b>Total</b>	<b>1,286,000,000</b>

**SCHEDULE III**

**Issuer Free Writing Prospectuses**

Free Writing Prospectus dated December 3, 2009 (attached to Schedule III hereto as Exhibit A)

Summary of Terms

Press Release dated December 2, 2009

Investor Presentation entitled "Bank of America — Raising Capital to Repay Government Investment (TARP)"

## BANK OF AMERICA CORPORATION

**\$19,290,000,000 Common Equivalent Securities, Consisting of Depositary Shares, Each Representing a 1/1,000<sup>th</sup> Interest in a Share of Common Equivalent Junior Preferred Stock, Series S and Contingent Warrants to Purchase a Fraction of a Share of Common Stock (Which Contingent Warrants in the Aggregate Allow for the Purchase of 60,056,200 Shares of Common Stock)**

## FINAL TERM SHEET

Issuer:	Bank of America Corporation (the “Company”)
Security:	<p>\$19,290,000,000 of Common Equivalent Securities, each consisting of (i) one depositary share (each, a “Depositary Share”), representing a 1/1,000<sup>th</sup> interest in a share of the Company’s Common Equivalent Junior Preferred Stock, Series S (the “Common Equivalent Stock”), each share of which, upon the approval of the Company’s stockholders of an amendment to the Amended and Restated Certificate of Incorporation of the Company (the “Amendment”) to increase the number of authorized shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), from 10,000,000,000 to such amount as is authorized by the Board of Directors of the Company, which amount shall not be less than a sum sufficient to effect the conversion of the Common Equivalent Stock, will automatically convert in full into</p> <p>shares of Common Stock, at a conversion rate of 1,000 shares of Common Stock for each share of Common Equivalent Stock; and (ii) a contingent warrant to purchase 0.0467 of a share of Common Stock (the contingent warrants in the aggregate allow for the purchase of 60,056,200 shares of Common Stock) at an exercise price of \$0.01 per share that will become exercisable for a 30-day period (at the end of which such contingent warrant will immediately and automatically expire) if the Company’s stockholders reject the Amendment.</p>
Ticker:	BAC PR S
Public offering price per Common Equivalent Security:	\$15.00
Number of Common Equivalent Securities issued:	1,286,000,000
Number of shares of Common Stock issuable upon conversion of the Common Equivalent Stock represented by Depositary Shares forming part of the Common Equivalent Securities issued in this Offering:	In the aggregate, upon issuance, 1,286,000,000 shares of Common Stock will be issuable upon conversion of the Common Equivalent Stock (or one share of Common Stock for each Depositary Share).

Use of proceeds: The Company intends to use the net proceeds of this offering, together with existing funds, to repurchase the TARP preferred stock held by the Treasury Department pursuant to the Company's participation in TARP.

Book-runner: Merrill Lynch, Pierce, Fenner & Smith Incorporated

Co-manager and qualified independent underwriter: UBS Securities LLC

Underwriting The prospectus supplement related to this offering may be used by Merrill Lynch, Pierce, Fenner & Smith Incorporated in connection with offers and sales of the Common Equivalent Securities and shares of Common Stock in market-making transactions, to the extent permissible.

CUSIP/ISIN: 060505419 / US0605054198

The issuer has filed a registration statement including a prospectus and a prospectus supplement with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus and prospectus supplement in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may obtain these documents for free by visiting EDGAR on the SEC Web site at [www.sec.gov](http://www.sec.gov). Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus and the prospectus supplement if you request them by calling Merrill Lynch, Pierce, Fenner & Smith Incorporated at (866) 500-5408 and UBS Securities LLC at (888) 827-7275.

SCHEDULE IV

Number of Securities sold: 1,286,000,000

Public offering price per Security: \$15.00

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**EXHIBIT A**  
Lock-Up Agreement

December \_\_, 2009

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
4 World Financial Center  
New York, NY 10080

UBS Securities LLC  
299 Park Avenue  
New York, NY 10171-0026

Ladies and Gentlemen:

The undersigned understands that you propose to enter into an Underwriting Agreement (the "Underwriting Agreement") with Bank of America Corporation, a Delaware corporation (the "Company"), providing for the public offering (the "Public Offering") by the Underwriters named in Schedule II to the Underwriting Agreement (the "Underwriters"), of Common Equivalent Securities (the "Securities"). Each Security initially will consist of (i) one depositary share, representing a 1/1,000<sup>th</sup> interest in a share of the Company's Common Equivalent Junior Preferred Stock, Series S (the "Common Equivalent Stock"), each share of which, upon the approval of the Company's stockholders of an Amendment to the Amended and Restated Certificate of Incorporation of the Company (the "Amendment") to increase the number of authorized shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), from 10,000,000,000 to such amount as is authorized by the Board of Directors of the Company, which amount shall not be less than a sum sufficient to effect the conversion of the Common Equivalent Stock, will automatically convert in full into shares of Common Stock, at a conversion rate of 1,000 shares of Common Stock for each share of Common Equivalent Stock; and (ii) a contingent warrant to purchase a fraction of a share of Common Stock at an exercise price of \$0.01 per share that will become exercisable for a 30-day period (at the end of which such contingent warrant will immediately and automatically expire) if the Company's stockholders reject the Amendment. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Underwriting Agreement.

In consideration of the Underwriters' agreement to purchase and make the Public Offering of the Securities, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned hereby agrees that, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the Underwriters, the undersigned will not, during the period ending 60 days (the "Lock-Up Period") after the date of the prospectus relating to the Public Offering (the "Prospectus"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of

Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock with respect to which the undersigned has the power of disposition or (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise.

The foregoing paragraph shall not apply to (a) bona fide gifts, (b) dispositions to any trust for the direct or indirect benefit of the undersigned and/or a member of the immediate family of the undersigned, (c) the transfer or intestate succession to the legal representatives or a member of the immediate family of the undersigned, (d) the sale pursuant to any existing contract, instruction or plan that satisfies all of the requirements of Rule 10b5-1(c)(1)(i)(B) (a "Plan"), (e) the establishment of any Plan provided that no sales of Common Stock or securities convertible into, or exchangeable or exercisable for, Common Stock, shall be made pursuant to a Plan prior to the expiration of the Lock-Up Period if such Plan was established after the date hereof, (f) dispositions from any grantor retained annuity trust established for the direct benefit of the undersigned and/or a member of the immediate family of the undersigned pursuant to the terms of such trust, (g) the distribution to any partnership, corporation or limited liability company controlled by the undersigned or by a member of the immediate family of the undersigned, (h) the disposition pursuant to an existing pledge of Common Stock or securities convertible into, or exchangeable or exercisable for, Common Stock as security for a margin account pursuant to the terms of such account, (i) the exercise pursuant to the Company's existing stock option plans effected by the delivery or sale of shares of Common Stock of the Company held by the undersigned. For purposes of this paragraph, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin.

In furtherance of the foregoing, the Company, and any duly appointed transfer agent for the registration or transfer of the securities described herein, are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Letter Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Letter Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that, if the Underwriting Agreement does not become effective, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Securities to be sold thereunder, the undersigned shall be released from all obligations under this Letter Agreement. The undersigned understands that the Underwriters are entering into the Underwriting Agreement and proceeding with the Public Offering in reliance upon this Letter Agreement.

This Letter Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

Very truly yours,

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**EXHIBIT A-1**

List of Directors and Officers Signing Lock-ups:

Kenneth D. Lewis  
Gregory L. Curl  
David Darnell  
Barbara J. Desoer  
Sallie L. Krawcheck  
Thomas K. Montag  
Brian T. Moynihan  
Joe L. Price

## [LETTERHEAD OF MCGUIREWOODS LLP]

December 9, 2009

Bank of America Corporation  
Bank of America Corporate Center  
100 North Tryon Street  
Charlotte, North Carolina 28255

Re: Registration of Bank of America Corporation Units Referred to as Common Equivalent Securities, Each Consisting of a Depositary Share, Representing a 1/1,000<sup>th</sup> Interest in a Share of Bank of America Corporation Common Equivalent Junior Preferred Stock, Series S, and a Contingent Warrant to Purchase 0.0467 of a Share of Bank of America Corporation Common Stock

Ladies and Gentlemen:

We have acted as counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), in connection with (a) the issuance by the Corporation of 1,286,000,000 of its units referred to as Common Equivalent Securities (the "Securities"), each consisting of (i) a depositary share (the "Depositary Shares"), representing a 1/1,000<sup>th</sup> interest in a share of Bank of America Corporation Common Equivalent Junior Preferred Stock, Series S (the "Preferred Stock"), which Preferred Stock converts automatically into shares (the "Underlying Shares") of the Corporation's common stock, \$0.01 par value per share (the "Common Stock") as and on the terms and conditions set forth in the Certificate of Designations for the Preferred Stock, and (ii) a contingent warrant (the "Contingent Warrants") to purchase 0.0467 of a share of Common Stock, which Contingent Warrants in the aggregate allow for the purchase of 60,056,200 shares of Common Stock (the "Warrant Shares"), and (b) the Registration Statement on Form S-3, Registration No. 333-158663 (the "Registration Statement"), filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the Corporation's unsecured debt securities, warrants, purchase contracts, units, preferred stock, common stock, depositary shares, junior subordinated notes and guarantees with respect to trust securities, and the Prospectus dated April 20, 2009 constituting part of the Registration Statement, as supplemented by the Final Prospectus Supplement dated December 3, 2009, filed with the Commission pursuant to Rule 424(b) under the Securities Act, relating to the Securities, the Depositary Shares, the Preferred Stock, the Contingent Warrants, the Underlying Shares and the Warrant Shares. The Securities are to be sold pursuant to an Underwriting Agreement dated December 3, 2009 (the "Underwriting Agreement"), among the Corporation, Merrill Lynch, Pierce,

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Fenner & Smith Incorporated, as representative of the several underwriters named in Schedule II thereto, and UBS Securities LLC. The Preferred Stock is to be deposited with Computershare Trust Company, N.A., as depository, pursuant to the terms of the Deposit Agreement dated December 3, 2009 (the "Deposit Agreement"), among the Corporation, Computershare Trust Company, N.A., Computershare Inc. and the holders from time to time of depository receipts issued thereunder. The Underlying Shares are issued upon automatic conversion of the Preferred Stock as set forth in and in accordance with the terms and conditions of the Certificate of Designations for the Preferred Stock, and the Warrant Shares are to be sold from time to time upon exercise of the Contingent Warrants in accordance with the terms and conditions thereof.

As such counsel, we have examined and are familiar with such originals or photocopies or certified copies of such records of the Corporation and its subsidiaries, certificates of officers of the Corporation and of public officials, and such other documents as we have deemed relevant or necessary as the basis for the opinions set forth below. In such examinations, we have assumed the legal capacity of natural persons, the genuineness of all signatures on, and the authenticity of, all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as photocopies thereof and the authenticity of the originals of such copies. We have also relied upon statements of fact contained in documents that we have examined in connection with our representation of the Corporation.

Based solely upon the foregoing, and in reliance thereon, and subject to the limitations, qualifications and exceptions set forth below, we are of the opinion that:

1. The Securities have been duly and validly authorized for issuance and sale, and, when issued and delivered against payment therefor pursuant to the Underwriting Agreement, the Securities will be duly and validly issued and fully paid and nonassessable.
  2. The shares of Preferred Stock have been duly authorized and, upon payment for and delivery as contemplated in the Underwriting Agreement and the Deposit Agreement, will be duly and validly issued and fully paid and nonassessable.
  3. The Depositary Shares have been duly authorized, and when issued and delivered against payment therefor pursuant to the Underwriting Agreement and the Deposit Agreement, the Depositary Shares will be duly and validly issued, fully paid and nonassessable and will represent valid interests in the Preferred Stock.
  4. The Contingent Warrants have been duly authorized and, upon payment for, due execution of and delivery in accordance with the Underwriting Agreement and the form of Contingent Warrant, the Contingent Warrants will be valid and legally binding obligations of the Corporation, enforceable against the Corporation in accordance with their terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other similar laws affecting the rights of creditors now or hereafter in effect, and to equitable principles that may limit the right to specific enforcement of remedies, and further subject to 12 U.S.C. §1818(b)(6)(D) (or any successor statute) and any bank regulatory powers now or hereafter in effect and to the application of principles of public policy.
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5. The Underlying Shares have been duly authorized and, upon issuance and delivery of the Underlying Shares in accordance with the terms of the Preferred Stock, will be validly issued, fully paid and nonassessable.
6. The Warrant Shares have been duly authorized and, upon payment for and delivery pursuant to the Contingent Warrants, if issued upon exercise, if any, of the Contingent Warrants in accordance with the terms thereof, will be validly issued, fully paid and nonassessable.

We hereby consent to be named in the Registration Statement as attorneys who passed upon the legality of the Securities, the Preferred Stock, the Depositary Shares, the Contingent Warrants, the Underlying Shares and the Warrant Shares and to the filing of a copy of this opinion as part of the Corporation's Current Report on Form 8-K to be filed with the Commission for the purpose of including this opinion as part of the Registration Statement.

Very truly yours,

/s/ MCGUIREWOODS LLP



December 9, 2009

Investors May Contact:

Kevin Stitt, Bank of America, 1.704.386.5667

Lee McEntire, Bank of America, 1.704.388.6780

Reporters May Contact:

Scott Silvestri, Bank of America, 1.980.388.9921

[scott.silvestri@bankofamerica.com](mailto:scott.silvestri@bankofamerica.com)

**Bank of America Completes Repayment of TARP**

CHARLOTTE — Bank of America today sent the U.S. Treasury \$45 billion to repay the U.S. taxpayers' entire investment in the company as part of the Troubled Asset Relief Program (TARP). Repayment followed the successful completion of a securities offering.

As previously announced, the company sold 1.286 billion common equivalent securities, generating gross proceeds of approximately \$19.29 billion. The offering was priced at \$15.00 per common equivalent security and its proceeds, along with existing corporate funds, were used to repurchase all the preferred stock issued to the U.S. Department of the Treasury. The company also paid the government \$190 million in accrued dividends on the repurchased preferred securities.

In repaying TARP, Bank of America today repurchased all 600,000 shares of its Fixed Rate Cumulative Perpetual Preferred Stock, Series N; all 400,000 shares of its Fixed Rate Cumulative Perpetual Preferred Stock, Series Q; and all 800,000 shares its Fixed Rate Cumulative Perpetual Preferred Stock, Series R. The U.S. Treasury continues to hold warrants to buy Bank of America common stock issued as part of the TARP investments.

"We owe taxpayers our thanks for making these funds available to the nation's financial system and to our company during a very difficult time," said Chief Executive Officer and President Kenneth D. Lewis. "Now that we have cleared this significant hurdle, which demonstrates the strength of our company, we look forward to continuing to play a key role in the economic recovery and helping to meet the changing needs of our customers and clients."

Following the completed securities offering, Bank of America also would increase equity by approximately \$3 billion through asset sales to be approved by the Board of Governors of the Federal Reserve and contracted for by June 30, 2010.

More

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As previously announced, Bank of America also agreed to raise up to approximately \$1.7 billion through the issuance of restricted stock in lieu of a portion of incentive cash compensation to certain Bank of America associates as part of their normal year-end incentive payments. Year-end incentive payments are dependent on the performance of the company, business units and individuals and have not yet been determined. This initiative also aligns associate interests with the company's performance.

With the repayment of TARP funds and these other initiatives, the company's Tier 1 Capital ratio would be 11.0 percent, pro forma based on the September 30, 2009 ratio of 12.5 percent. The Tier 1 Common capital ratio would be 8.4 percent, pro forma based on the September 30, 2009 ratio of 7.3 percent.

BofA Merrill Lynch served as the sole bookrunner for the common equivalent securities offering and UBS Investment Bank served as co-manager and qualified independent underwriter.

#### Bank of America

Bank of America is one of the world's largest financial institutions, serving individual consumers, small- and middle-market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk management products and services. The company provides unmatched convenience in the United States, serving approximately 53 million consumer and small business relationships with 6,000 retail banking offices, more than 18,000 ATMs and award-winning online banking with more than 29 million active users. Bank of America is among the world's leading wealth management companies and is 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. Bank of America offers industry-leading support to more than 4 million small business owners through a suite of innovative, easy-to-use online products and services. The company serves clients in more than 150 countries. Bank of America Corporation stock (NYSE: BAC) is a component of the Dow Jones Industrial Average and is listed on the New York Stock Exchange.

[www.bankofamerica.com](http://www.bankofamerica.com)

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