

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

**FORM S-8**

**REGISTRATION STATEMENT**  
**UNDER**  
**THE SECURITIES ACT OF 1933**

**Bank of America Corporation**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation or Organization)

**56-0906609**  
(I.R.S. Employer  
Identification No.)

**Bank of America Corporate Center**  
**100 North Tryon Street**  
**Charlotte, North Carolina**  
(Address of Principal Executive Offices)

**28255**  
(Zip Code)

**Bank of America Corporation 2003 Key Associate Stock Plan**  
(Full Title of the Plan)

**PAUL J. POLKING, ESQ.**  
**General Counsel**  
**Bank of America Corporation**  
**Bank of America Corporate Center**  
**100 North Tryon Street**  
**Charlotte, North Carolina 28255**  
(Name and Address of Agent for Service)

**1.800.299.2265**  
(Telephone Number, Including Area Code, of Agent for Service)

**CALCULATION OF REGISTRATION FEE**

| Title of Securities<br>to be Registered | Amount<br>to be<br>Registered | Proposed<br>Maximum<br>Offering<br>Price<br>Per Unit (1) | Proposed<br>Maximum<br>Aggregate<br>Offering<br>Price (1) | Amount of Registration<br>Fee |
|---|-------------------------------|--|---|-------------------------------|
| Common Stock                            | 100,000,000 shares            | \$68.48  | \$6,848,000,000   | \$630,016                     |

- (1) Determined on the basis of the average of the high and low prices of the Common Stock reported on the New York Stock Exchange on December 18, 2002 in accordance with Rule 457(c) under the Securities Act of 1933, as amended (the "Securities Act"), solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act.

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**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents, which have been heretofore filed by the Registrant with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are incorporated by reference herein:

- (a) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2001;
- (b) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2002, June 30, 2002 and September 30, 2002, and Current Reports on Form 8-K filed since January 1, 2002; and
- (c) The description of the Registrant's Common Stock contained in its registration statement filed pursuant to Section 12 of the Exchange Act, and any amendment or report filed for the purpose of updating such description, including the Registrant's Current Report on Form 8-K filed September 28, 1998.

All documents filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the effectiveness of this Registration Statement and prior to the filing of a post-effective amendment hereto that either indicates that all securities offered hereby have been sold or deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

The Registrant will provide without charge to each participant in the Bank of America Corporation 2003 Key Associate Stock Plan, on the written or oral request of any such person, a copy of any or all of the documents incorporated herein by reference (other than exhibits to such documents which are not specifically incorporated by reference in such documents). Written requests for such copies should be directed to J. Steele Alphin, Corporate Personnel Executive, Bank of America Corporation, Bank of America Corporate Center, 100 North Tryon Street, Charlotte, North Carolina 28255. Telephone requests may be directed to 1.800.299.2265.

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**Item 6. Indemnification of Directors and Officers.**

Subsection (a) of Section 145 of the Delaware General Corporation Law (the “DGCL”) empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful.

Subsection (b) of Section 145 of the DGCL empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if such person acted in accordance with the above standards, except that no indemnification may be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 of the DGCL further provides that, to the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in the defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith; and that indemnification provided by, or granted pursuant to, Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled. Section 145 further empowers the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of such person’s status as such, whether or not the corporation would have the power to indemnify such person against such liabilities under Section 145 of the DGCL. Section 145 also provides that the expenses incurred by an officer or director in defending any action, suit, or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking of the director

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or officer to repay the expenses if it is ultimately determined that the director or officer is not entitled to indemnification therefor.

Section 102(b)(7) of the DGCL permits a corporation's certificate of incorporation to contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided that such provision shall not eliminate or limit the liability of a director for (i) any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of the law; (iii) willful or negligent unlawful payment of a dividend or stock purchase or redemption; or (iv) any transaction from which the director derived an improper personal benefit.

The Amended and Restated Certificate of Incorporation of the Registrant eliminates the ability to recover monetary damages against directors of the Registrant for breach of fiduciary duty to the fullest extent permitted by the DGCL. In accordance with the provisions of the DGCL, the Bylaws of the Registrant provide that, in addition to the indemnification of directors and officers otherwise provided by the DGCL, the Registrant shall, under certain circumstances, indemnify its directors, executive officers and certain other designated officers against any and all liability and litigation expense, including reasonable attorneys' fees, arising out of their status or activities as directors and officers, except for liability or litigation expense incurred on account of activities that were at the time known or believed by such director or officer to be in conflict with the best interests of the Registrant. Pursuant to such Bylaws and as authorized by statute, the Registrant may also maintain, and does maintain, insurance on behalf of its directors and officers against liability asserted against such persons in such capacity whether or not such directors or officers have the right to indemnification pursuant to the Bylaws or otherwise.

In addition, pursuant to the Agreement and Plan of Reorganization dated as of April 10, 1998 (the "Merger Agreement") between the Registrant, formerly NationsBank Corporation ("NationsBank"), and the former BankAmerica Corporation ("old BankAmerica"), for six years after September 30, 1998 (the date of the consummation of the merger of old BankAmerica with and into the Registrant (the "Merger")), the Registrant will indemnify directors, officers and employees of old BankAmerica, NationsBank, or any of their respective subsidiaries against certain liabilities in connection with such persons' status as such or in connection with the Merger Agreement or any of the transactions contemplated thereby. Pursuant to the Merger Agreement, the Registrant will also, for six years after September 30, 1998 and with respect to events occurring prior to the consummation of the Merger, honor all rights to indemnification and limitations of liability existing in favor of the foregoing persons as provided in the governing documents of NationsBank, old BankAmerica or their respective subsidiaries. Pursuant to the Merger Agreement, for six years after September 30, 1998, the Registrant will also use its best efforts to cause the directors and officers of old BankAmerica and NationsBank to be covered by a directors' and officers' liability insurance policy with respect to acts or omissions occurring prior to the consummation of the Merger.

The foregoing is only a general summary of certain aspects of Delaware law dealing with indemnification of directors and officers and does not purport to be complete. It is qualified in

its entirety by reference to the relevant statutes which contain detailed specific provisions regarding the circumstances under which and the persons for whose benefit indemnification shall or may be made. In addition, from time to time provisions providing for indemnification of the Registrant and its directors and officers by underwriters or agents against certain liabilities, including certain liabilities under the Securities Act of 1933, as amended (the "Securities Act") have been contained in agreements relating to other securities of the Registrant.

**Item 8. Exhibits.**

The following exhibits are filed with or incorporated by reference in this Registration Statement.

| <u>Exhibit No.</u> | <u>Description of Exhibit</u>   |
|--------------------|---|
| 5.1                | Opinion of Paul J. Polking, Esq., General Counsel of the Registrant, as to the legality of the securities being registered. |
| 23.1               | Consent of PricewaterhouseCoopers LLP.  |
| 23.2               | Consent of Paul J. Polking, Esq., General Counsel of the Registrant (included in Exhibit 5.1).                              |
| 24.1               | Power of Attorney and Certified Resolution.   |
| 99.1               | Bank of America Corporation 2003 Key Associate Stock Plan.  |

**Item 9. Undertakings.**

The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to the Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate

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offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; provided, however, that paragraphs (1)(i) and (1)(ii) above do not apply if the Registration Statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel, the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, State of North Carolina, on December 20, 2002.

**BANK OF AMERICA CORPORATION**

By: \*/s/ KENNETH D. LEWIS

**Kenneth D. Lewis**  
**Chairman and Chief Executive Officer**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| <u>Signature</u>  | <u>Title</u>  | <u>Date</u>       |
|---|---|-------------------|
| <u>*/s/ KENNETH D. LEWIS</u><br><b>Kenneth D. Lewis</b>       | Chairman, Chief Executive Officer and Director (Principal Executive Officer)              | December 20, 2002 |
| <u>*/s/ JAMES H. HANCE, JR.</u><br><b>James H. Hance, Jr.</b> | Vice Chairman, Chief Financial Officer and Director (Principal Financial Officer)         | December 20, 2002 |
| <u>*/s/ MARC D. OKEN</u><br><b>Marc D. Oken</b>               | Executive Vice President and Principal Financial Executive (Principal Accounting Officer) | December 20, 2002 |
| <u>*/s/ JOHN R. BELK</u><br><b>John R. Belk</b>               | Director  | December 20, 2002 |
| <u>Charles W. Coker</u>                                       | Director  | December , 2002   |

|                                   |          |                   |
|-----------------------------------|----------|-------------------|
| <b>*/s/ FRANK DOWD, IV</b>        | Director | December 20, 2002 |
| <b>Frank Dowd, IV</b>             |          |                   |
| <b>*/s/ KATHLEEN F. FELDSTEIN</b> | Director | December 20, 2002 |
| <b>Kathleen F. Feldstein</b>      |          |                   |
| <b>*/s/ DONALD E. GUINN</b>       | Director | December 20, 2002 |
| <b>Donald E. Guinn</b>            |          |                   |
| <b>*/s/ C. RAY HOLMAN</b>         | Director | December 20, 2002 |
| <b>C. Ray Holman</b>              |          |                   |
| <b>*/s/ WALTER E. MASSEY</b>      | Director | December 20, 2002 |
| <b>Walter E. Massey</b>           |          |                   |
| <b>C. Steven McMillan</b>         | Director | December 20, 2002 |
| <b>*/s/ PATRICIA E. MITCHELL</b>  | Director | December 20, 2002 |
| <b>Patricia E. Mitchell</b>       |          |                   |
| <b>*/s/ O. TEMPLE SLOAN, JR.</b>  | Director | December 20, 2002 |
| <b>O. Temple Sloan, Jr.</b>       |          |                   |
| <b>*/s/ MEREDITH R. SPANGLER</b>  | Director | December 20, 2002 |
| <b>Meredith R. Spangler</b>       |          |                   |
| <b>*/s/ RONALD TOWNSEND</b>       | Director | December 20, 2002 |
| <b>Ronald Townsend</b>            |          |                   |
| <b>*/s/ JACKIE M. WARD</b>        | Director | December 20, 2002 |
| <b>Jackie M. Ward</b>             |          |                   |

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Virgil R. Williams

Director

December , 2002

\*By:

/s/ RACHEL R. CUMMINGS

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Rachel R. Cummings  
Attorney-in-Fact

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## INDEX TO EXHIBITS

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| 23.1               | Consent of PricewaterhouseCoopers LLP.  |
| 23.2               | Consent of Paul J. Polking, Esq., General Counsel of the Registrant (included in Exhibit 5.1).                              |
| 24.1               | Power of Attorney and Certified Resolution.   |
| 99.1               | Bank of America Corporation 2003 Key Associate Stock Plan.  |

Paul J. Polking  
Executive Vice President and General Counsel  
[Bank of America Corporation letterhead]

**Exhibit 5.1**

December 20, 2002

Board of Directors  
Bank of America Corporation  
Bank of America Corporate Center  
Charlotte, North Carolina 28255

Ladies and Gentlemen:

In connection with the proposed registration under the Securities Act of 1933, as amended, of 100,000,000 shares (the "Shares") of the common stock of Bank of America Corporation (the "Common Stock") to be issued pursuant to the terms of the Bank of America Corporation 2003 Key Associate Stock Plan (the "Plan"), members of my staff and I have examined such corporate records and other documents, including the Registration Statement on Form S-8 (the "Registration Statement") and Prospectus relating to the Shares, and have reviewed such matters of law as we have deemed necessary or appropriate for this opinion. Based on such examination and review, it is my opinion that the Shares have been duly and validly authorized and, when issued and paid for in accordance with and upon the terms and conditions of the Plan, will be validly issued, fully paid and nonassessable.

I consent to be named in the Registration Statement as the attorney who passed upon the legality of the Shares, and to the filing of a copy of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ PAUL J. POLKING

Paul J. Polking

**CONSENT OF INDEPENDENT ACCOUNTANTS**

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated January 18, 2002 relating to the financial statements, which appears in the Bank of America Corporation Annual Report for the year ended December 31, 2001.

/s/ PRICEWATERHOUSECOOPERS LLP

PricewaterhouseCoopers LLP  
Charlotte, North Carolina  
December 20, 2002



| <u>Signature</u>  | <u>Title</u>   | <u>Date</u>       |
|---|--|-------------------|
| /s/ KENNETH D. LEWIS<br>_____<br>Kenneth D. Lewis           | Chairman, Chief Executive Officer and Director<br>(Principal Executive Officer)              | December 10, 2002 |
| /s/ JAMES H. HANCE, JR.<br>_____<br>James H. Hance, Jr.     | Vice Chairman, Chief Financial Officer and Director<br>(Principal Financial Officer)         | December 10, 2002 |
| /s/ MARC D. OKEN<br>_____<br>Marc D. Oken                   | Executive Vice President and Principal Financial Executive<br>(Principal Accounting Officer) | December 10, 2002 |
| /s/ JOHN R. BELK<br>_____<br>John R. Belk                   | Director   | December 10, 2002 |
| _____<br>Charles W. Coker                                   | Director   | December , 2002   |
| /s/ FRANK DOWD, IV<br>_____<br>Frank Dowd, IV               | Director   | December 10, 2002 |
| /s/ KATHLEEN F. FELDSTEIN<br>_____<br>Kathleen F. Feldstein | Director   | December 10, 2002 |
| _____<br>Paul Fulton  | Director   | December , 2002   |
| /s/ DONALD E. GUINN<br>_____<br>Donald E. Guinn             | Director   | December 10, 2002 |
| /s/ C. RAY HOLMAN<br>_____<br>C. Ray Holman                 | Director   | December 10, 2002 |
| /s/ WALTER E. MASSEY<br>_____<br>Walter E. Massey           | Director   | December 10, 2002 |
| _____<br>C. Steven McMillan                                 | Director   | December , 2002   |

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|                                 |          |                   |
|---------------------------------|----------|-------------------|
| <u>/s/ PATRICIA E. MITCHELL</u> | Director | December 10, 2002 |
| <b>Patricia E. Mitchell</b>     |          |                   |
| <u>/s/ O. TEMPLE SLOAN, JR.</u> | Director | December 10, 2002 |
| <b>O. Temple Sloan, Jr.</b>     |          |                   |
| <u>/s/ MEREDITH R. SPANGLER</u> | Director | December 10, 2002 |
| <b>Meredith R. Spangler</b>     |          |                   |
| <u>/s/ RONALD TOWNSEND</u>      | Director | December 10, 2002 |
| <b>Ronald Townsend</b>          |          |                   |
| <u>Peter V. Ueberroth</u>       | Director | December , 2002   |
| <b>Peter V. Ueberroth</b>       |          |                   |
| <u>/s/ JACKIE M. WARD</u>       | Director | December 10, 2002 |
| <b>Jackie M. Ward</b>           |          |                   |
| <u>Virgil R. Williams</u>       | Director | December , 2002   |
| <b>Virgil R. Williams</b>       |          |                   |

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**Bank of America Corporation**  
**Extract of Board of Director Resolutions**

**January 23, 2002**

RESOLVED, that Charles M. Berger, Rachel R. Cummings and Paul J. Polking be, and each of them with full power to act without the other hereby is, authorized and empowered to sign the aforesaid Registration Statements [relating to the Bank of America Corporation 2003 Key Associate Stock Plan] and any amendment or amendments thereto (including any post-effective amendments) on behalf of and as attorneys for the Corporation and on behalf of and as attorneys for any of the following: the chief executive officer, the principal financial officer, the principal accounting officer and any other officer of the Corporation.

**CERTIFICATE OF SECRETARY**

I, ALLISON L. GILLIAM, Assistant Secretary of Bank of America Corporation, a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the foregoing is a true and correct extract of resolutions duly adopted by a majority of the entire Board of Directors of said Corporation at a meeting of said Board of Directors held on January 23, 2002, at which meeting a quorum was present and acted throughout and that said resolution is in full force and effect and has not been amended or rescinded as of the date hereof.

IN WITNESS WHEREOF, I have hereupon set my hand and affixed the seal of said corporation this 20th day of December, 2002.

(SEAL)

/s/ ALLISON L. GILLIAM  
Allison L. Gilliam  
Assistant Secretary

**Bank of America Corporation  
2003 Key Associate Stock Plan**

Effective Date: January 1, 2003

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## Table of Contents

| <b>Contents</b>   | <b>Page</b> |
|---|-------------|
| <a href="#"><u>Article 1. Establishment, Duration and Purpose</u></a>         | 1           |
| <a href="#"><u>Article 2. Definitions</u></a>                                 | 1           |
| <a href="#"><u>Article 3. Administration</u></a>                              | 6           |
| <a href="#"><u>Article 4. Shares Subject to the Plan</u></a>                  | 6           |
| <a href="#"><u>Article 5. Eligibility and Participation</u></a>               | 8           |
| <a href="#"><u>Article 6. Stock Options</u></a>                               | 8           |
| <a href="#"><u>Article 7. Stock Appreciation Rights</u></a>                   | 10          |
| <a href="#"><u>Article 8. Restricted Stock and Restricted Stock Units</u></a> | 11          |
| <a href="#"><u>Article 9. Performance Measures</u></a>                        | 13          |
| <a href="#"><u>Article 10. Beneficiary Designation</u></a>                    | 14          |
| <a href="#"><u>Article 11. Deferrals</u></a>                                  | 14          |
| <a href="#"><u>Article 12. Rights of Key Associates</u></a>                   | 14          |
| <a href="#"><u>Article 13. Change in Control</u></a>                          | 14          |
| <a href="#"><u>Article 14. Amendment, Modification, and Termination</u></a>   | 16          |
| <a href="#"><u>Article 15. Withholding</u></a>                                | 17          |
| <a href="#"><u>Article 16. Indemnification</u></a>                            | 17          |
| <a href="#"><u>Article 17. Successors</u></a>                                 | 17          |
| <a href="#"><u>Article 18. Legal Construction</u></a>                         | 18          |

**Bank of America Corporation  
2003 Key Associate Stock Plan**

**Article 1. Establishment, Duration and Purpose**

**1.1 Establishment and Duration of the Plan.** The Company establishes this Plan effective as of January 1, 2003, subject to the Plan having been approved by the Company's stockholders prior to that date. The Plan shall remain in effect until the earlier (i) the date that no additional Shares are available for issuance under the Plan, (ii) the date that the Plan has been terminated in accordance with Article 14 or (iii) the close of business on December 31, 2007. Upon the Plan becoming effective, no further awards shall be made under the Bank of America Corporation Key Employee Stock Plan.

**1.2 Purpose of the Plan.** The Company believes that the compensation of its Key Associates should be significantly linked to the Company's business performance in order to enhance the long-term success and value of the Company. The Plan serves this compensation philosophy by providing a source of stock-based Awards for Key Associates that are intended to further motivate Key Associates to increase the value of the Company's common stock, thereby linking the personal interests of the Key Associates with those of the Company's stockholders. Terms and conditions placed on Awards further encourage the long-term retention of Key Associates. The Plan also provides the Company with a means to better attract and recruit Key Associates of outstanding ability who will further enhance the long-term success and value of the Company through their services.

**Article 2. Definitions**

Whenever used in the Plan, the following terms shall have the meanings set forth below and, when the meaning is intended, the initial letter of the word is capitalized:

**"Award"** means, individually or collectively, a grant under this Plan of Nonqualified Stock Options, Incentive Stock Options, Stock Appreciation Rights, Restricted Stock or Restricted Stock Units.

**"Award Agreement"** means an agreement between the Company and each Participant setting forth the terms and provisions applicable to Awards granted under this Plan.

**"Beneficial Owner"** or **"Beneficial Ownership"** shall have the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations under the Exchange Act.

**"Board"** or **"Board of Directors"** means the Board of Directors of the Company.

**"Change in Control"** of the Company means, and shall be deemed to have occurred upon, any of the following events:

- (a) The acquisition by any Person of Beneficial Ownership of twenty-five percent (25%) or more of either:
  - (i) The then-outstanding Shares (the "Outstanding Shares"); or

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## Table of Contents

(ii) The combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of Directors (the “Outstanding Voting Securities”);

*provided, however*, that the following acquisitions shall not constitute a Change in Control for purposes of this subparagraph (a): (A) any acquisition directly from the Company, (B) any acquisition by the Company or any of its Subsidiaries, (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any of its Subsidiaries, or (D) any acquisition by any corporation pursuant to a transaction which complies with clauses (i), (ii) and (iii) of subparagraph (c) below; or

(b) Individuals who, as of the Effective Date, constitute the Board of Directors (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board of Directors; *provided, however*, that any individual who becomes a Director subsequent to the Effective Date and whose election, or whose nomination for election by the Company’s stockholders, to the Board of Directors was either (i) approved by a vote of at least a majority of the Directors then comprising the Incumbent Board or (ii) recommended by a corporate governance committee comprised entirely of Directors who are then Incumbent Board members shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest, other actual or threatened solicitation of proxies or consents or an actual or threatened tender offer; or

(c) Approval by the Company’s stockholders of a reorganization, merger, or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a “Business Combination”), in each case, unless following such Business Combination, (i) all or substantially all of the Persons who were the Beneficial Owners, respectively, of the Outstanding Shares and Outstanding Voting Securities immediately prior to such Business Combination own, directly or indirectly, more than fifty percent (50%) of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from the Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the Outstanding Shares and Outstanding Voting Securities, as the case may be (*provided, however*, that for purposes of this clause (i), any shares of common stock or voting securities of such resulting corporation received by such Beneficial Owners in such Business Combination other than as the result of such Beneficial Owners’ ownership of Outstanding Shares or Outstanding Voting Securities immediately prior to such Business Combination shall not be considered to be owned by such Beneficial Owners for the purposes of calculating their percentage of ownership of the outstanding common stock and voting power of the resulting corporation), (ii) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from the Business Combination) beneficially owns, directly or indirectly, twenty-five percent (25%) or more of, respectively, the then outstanding shares of common stock of the corporation resulting from the Business Combination or the combined voting power of the then outstanding voting securities of such corporation

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## Table of Contents

unless such Person owned twenty-five percent (25%) or more of the Outstanding Shares or Outstanding Voting Securities immediately prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or the action of the Board, providing for such Business Combination; or

(d) Approval by the Company's stockholders of a complete liquidation or dissolution of the Company.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time. References to the Code shall include the valid and binding governmental regulations, court decisions and other regulatory and judicial authority issued or rendered thereunder.

**"Committee"** means the Compensation Committee of the Board of Directors; *provided, however*, that (i) with respect to Awards to any Key Associates who are Insiders, Committee means all of the members of the Compensation Committee who are "non-employee directors" within the meaning of Rule 16b-3 adopted under the Exchange Act, and (ii) with respect to Awards to any Key Associates who are Named Executive Officers intended to comply with the Performance-Based Exception, Committee means all of the members of the Compensation Committee who are "outside directors" within the meaning of Section 162(m) of the Code. Committee may also mean any individual or committee of individuals (who need not be Directors) that the Compensation Committee may appoint from time to time to administer the Plan with respect to Awards to Key Associates who are not Insiders or Named Executive Officers, in accordance with and subject to the requirements of Section 3.2.

**"Company"** means Bank of America Corporation, a Delaware corporation, and any successor as provided in Article 17 herein.

**"Director"** means any individual who is a member of the Board of Directors of the Company.

**"Disability"** with respect to a Participant, means "disability" as defined from time to time under any long-term disability plan of the Company or Subsidiary with which the Participant is employed.

**"Earnings Per Share"** means "earnings per common share" of the Company based on all earnings (either diluted or without regard to dilution, as selected by the Committee) determined in accordance with generally accepted accounting principles that would be reported in the Company's Annual Report to Stockholders or Annual Report on Form 10-K.

**"Effective Date"** means January 1, 2003.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended from time to time, or any successor act thereto.

**"Fair Market Value"** of a Share on any date means the closing price of a Share as reflected in the report of composite trading of New York Stock Exchange listed securities for that day (or, if no Shares were publicly traded on that day, the immediately preceding day that Shares were so traded) published in *The Wall Street Journal [Eastern Edition]* or in any other publication selected by the Committee; *provided, however*, that if the Shares are misquoted or omitted by the selected publication(s), the

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## Table of Contents

Committee shall directly solicit the information from officials of the stock exchanges or from other informed independent market sources.

**“Incentive Stock Option”** or **“ISO”** means an option to purchase Shares granted to a Key Associate under Article 6 herein, and designated as an Incentive Stock Option which is intended to meet the requirements of Section 422 of the Code.

**“Insider”** shall mean an individual who is, on the relevant date, an officer, director or ten percent (10%) beneficial owner of any class of the Company’s equity securities that is registered pursuant to Section 12 of the Exchange Act, all as defined under Section 16 of the Exchange Act and the rules thereunder.

**“Key Associate”** means an employee of the Company or any Subsidiary, including an officer of the Company or a Subsidiary, in a managerial or other important position who, by virtue of such employee’s ability, qualifications and performance, has made, or is expected to make, important contributions to the Company or its Subsidiaries, all as determined by the Committee in its discretion.

**“Named Executive Officer”** means, for a calendar year, a Participant who is one of the group of “covered employees” for such calendar year within the meaning of Code Section 162(m) or any successor statute.

**“Net Income”** means “net income” of the Company determined in accordance with generally accepted accounting principles that would be reported in the Company’s Annual Report to Stockholders or Annual Report on Form 10-K.

**“Nonqualified Stock Option”** or **“NQSO”** means an option to purchase Shares granted to a Key Associate under Article 6 herein, and which is not intended to meet the requirements of Code Section 422.

**“Operating Earnings Per Share”** means “earnings per common share” of the Company based only on operating earnings (either diluted or without regard to dilution, as selected by the Committee) determined in accordance with generally accepted accounting principles that would be reported in the Company’s Annual Report to Stockholders or Annual Report on Form 10-K.

**“Option”** means an Incentive Stock Option or a Nonqualified Stock Option.

**“Option Price”** means the price at which a Share may be purchased by a Participant pursuant to an Option.

**“Participant”** means a Key Associate, a former Key Associate or any permitted transferee under the Plan of a Key Associate or former Key Associate who has outstanding an Award granted under the Plan.

**“Performance-Based Exception”** means the performance-based exception set forth in Code Section 162(m)(4)(C) from the deductibility limitations of Code Section 162(m).

**“Period of Restriction”** means the period during which the transfer of Shares of Restricted Stock or an Award of Restricted Stock Units is limited in some way (based on the passage of time, the achievement of performance goals, or upon the occurrence of other events as determined by the Committee, at its discretion), and the Shares of Restricted Stock or the Restricted Stock Units are subject to a substantial risk of forfeiture, as provided in Article 8 herein.

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## Table of Contents

“**Person**” shall have the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a “group” within the meaning of Section 13(d).

“**Plan**” means the incentive compensation plan set forth herein known as the “Bank of America Corporation 2003 Key Associate Stock Plan,” as the same may be amended from time to time.

“**Prior Plan**” means the Bank of America Corporation Key Employee Stock Plan, as amended and restated effective September 24, 1998.

“**Restoration Option**” means an Option that is granted in connection with the exercise of an Incentive Stock Option or a Nonqualified Stock Option as more particularly described in Section 6.10 herein.

“**Restricted Stock**” means an Award of Shares, subject to a Period of Restriction, that is granted to a Key Associate under Article 8 herein.

“**Restricted Stock Unit**” means an Award, subject to a Period of Restriction, that is granted to a Key Associate under Article 8 herein and is settled either (i) by the delivery of one (1) Share for each Restricted Stock Unit or (ii) in cash in an amount equal to the Fair Market Value of one (1) Share for each Restricted Stock Unit, all as specified in the applicable Award Agreement. The Award of a Restricted Stock Unit represents the mere promise of the Company to deliver a Share or the appropriate amount of cash, as applicable, at the end of the Period of Restriction (or such later date as provided by the Award Agreement) in accordance with and subject to the terms and conditions of the applicable Award Agreement, and is not intended to constitute a transfer of “property” within the meaning of Section 83 of the Code.

“**Return on Assets**” means “return on average assets” of the Company determined in accordance with generally accepted accounting principles that would be reported in the Company’s Annual Report to Stockholders or Annual Report on Form 10-K.

“**Return on Equity**” means “return on average common stockholders’ equity” of the Company determined in accordance with generally accepted accounting principles that would be reported in the Company’s Annual Report to Stockholders or Annual Report on Form 10-K.

“**Shareholder Value Added**” means the “shareholder value added” performance measure of the Company for a year determined in accordance with generally accepted accounting principles that would be reported in the Company’s Annual Report to Stockholders or Annual Report on Form 10-K for the year. In that regard, Shareholder Value Added for a year equals the cash basis operating earnings for the year less a charge for the use of capital for the year. For purposes of any Award intended to satisfy the Performance-Based Exception incorporating Shareholder Value Added as a performance criteria, the Committee shall approve the charge for the use of capital for use in determining Shareholder Value Added for the year within the time required under Code Section 162(m).

“**Shares**” means the shares of common stock of the Company.

“**Stock Appreciation Right**” or “**SAR**” means an Award designated as an SAR that is granted to a Key Associate under Article 7 herein.

“**Subsidiary**” means any corporation, partnership, joint venture, affiliate, or other entity in which the Company owns more than fifty percent (50%) of the voting stock or voting ownership interest, as

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## Table of Contents

applicable, or any other business entity designated by the Committee as a Subsidiary for purposes of the Plan.

**“Total Revenue”** means the sum of (i) net interest income on a taxable equivalent basis of the Company and (ii) noninterest income of the Company, such amounts determined in accordance with generally accepted accounting principles that would be reported in the Company’s Annual Report to Stockholders or Annual Report on Form 10-K.

**“Total Stockholder Return”** means the percentage change of an initial investment in Shares over a specified period assuming reinvestment of all dividends during the period.

### **Article 3. Administration**

**3.1 Authority of the Committee.** The Plan shall be administered by the Committee. Except as limited by law, or by the Certificate of Incorporation or Bylaws of the Company, and subject to the provisions herein, the Committee shall have full power to select Key Associates who shall participate in the Plan; determine the sizes and types of Awards; determine the terms and conditions of Awards in a manner consistent with the Plan; construe and interpret the Plan and any agreement or instrument entered into under the Plan; establish, amend, or waive rules and regulations for the Plan’s administration; and (subject to the provisions of Article 14 herein), amend the terms and conditions of any outstanding Award to the extent such terms and conditions are within the discretion of the Committee as provided in the Plan. Further, the Committee shall make all other determinations which may be necessary or advisable for the administration of the Plan.

**3.2 Delegation.** To the extent permitted by applicable law, the Committee may delegate its authority as identified herein to any individual or committee of individuals (who need not be Directors), including without limitation the authority to make Awards to Key Associates who are not Insiders or Named Executive Officers. To the extent that the Committee delegates its authority to make Awards as provided by this Section 3.2, all references in the Plan to the Committee’s authority to make Awards and determinations with respect thereto shall be deemed to include the Committee’s delegate. Any such delegate shall serve at the pleasure of, and may be removed at any time by, the Committee.

**3.3 Decisions Binding.** All determinations and decisions made by the Committee pursuant to the provisions of the Plan and all related orders and resolutions of the Board shall be final, conclusive and binding on all persons, including the Company, its stockholders, employees, Participants, and their estates and beneficiaries.

### **Article 4. Shares Subject to the Plan**

**4.1 Number of Shares Available for Grants.** Subject to the provisions of this Article 4, the aggregate number of Shares that may be issued to Participants pursuant to Awards granted under the Plan shall not exceed the sum of (A) one hundred million (100,000,000) Shares plus (B) the number of Shares available for awards under the Prior Plan as of December 31, 2002 plus (C) any Shares that were subject to an award under the Prior Plan which award is canceled, terminates, expires or lapses for any reason from and after the Effective Date.

**4.2 Lapsed Awards.** If any Award is canceled, terminates, expires, or lapses for any reason, any Shares subject to such Award shall not count against the aggregate number of Shares that may be issued under the Plan set forth in Section 4.1 above.

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## Table of Contents

**4.3 Shares Used to Pay Option Price and Withholding Taxes** If, in accordance with the terms of the Plan, a Participant pays the Option Price for an Option or satisfies any tax withholding requirement in connection with the exercise of an Option by either tendering previously owned Shares or having the Company withhold Shares, then such Shares surrendered to pay the Option Price or used to satisfy such tax withholding requirements shall not count against the aggregate number of Shares that may be issued under the Plan set forth in Section 4.1 above.

**4.4 Other Items Not Included.** The following items shall not count against the aggregate number of Shares that may be issued under the Plan set forth in Section 4.1 above: (i) the payment in cash of dividends or dividend equivalents under any outstanding Award; (ii) any Award that is settled in cash rather than by issuance of Shares; or (iii) Awards granted through the assumption of, or in substitution for, outstanding awards previously granted to individuals who become Key Associates as a result of a merger, consolidation, acquisition or other corporate transaction involving the Company or any Subsidiary.

**4.5 Award Limits.** Notwithstanding any provision herein to the contrary, the following provisions shall apply (subject to adjustment in accordance with Section 4.6 below):

- (i) in no event shall a Participant receive an Award or Awards during any one (1) calendar year covering in the aggregate more than two million (2,000,000) Shares (whether such Award or Awards may be settled in Shares, cash or any combination of Shares and cash);
- (ii) in no event shall there be granted during the term of the Plan Incentive Stock Options covering more than an aggregate of twenty million (20,000,000) Shares;
- (iii) in no event shall there be granted during the term of the Plan Shares of Restricted Stock or Restricted Stock Units covering more than an aggregate of five million (5,000,000) Shares; *provided, however*, that the limitation of this subparagraph (iii) shall not apply to any Award of Restricted Stock or Restricted Stock Units either (A) described in subparagraph (iv) below or (B) which is earned solely on the basis of the achievement of performance goals; and
- (iv) up to an aggregate of twenty-five million (25,000,000) Shares may be granted during the term of the Plan as Restricted Stock or Restricted Stock Units to Key Associates as a portion of their annual incentive compensation under the Company's Equity Incentive Plan (or any similar plan or program as determined by the Committee applicable to any Key Associate, including any such program applicable to an Insider or Named Executive Officer).

**4.6 Adjustments in Authorized Shares.** In the event of any change in corporate capitalization, such as a stock split, or a corporate transaction, such as any merger, consolidation, separation, including a spin-off, or other distribution of stock or property of the Company, any reorganization (whether or not such reorganization comes within the definition of such term in Code Section 368) or any partial or complete liquidation of the Company, such adjustment shall be made in the number and class of Shares which may be issued under the Plan and in the number and class of and/or price of Shares subject to outstanding Awards granted under the Plan, as may be determined to be appropriate and equitable by the Committee, in its sole discretion, to prevent dilution or enlargement of rights; *provided, however*, that the number of Shares subject to any Award shall always be a whole number.

**4.7 Source of Shares.** Shares issued under the Plan may be original issue shares, treasury stock or shares purchased in the open market or otherwise, all as determined by the Chief Financial

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## Table of Contents

Officer of the Company (or the Chief Financial Officer's designee) from time to time, unless otherwise determined by the Committee.

### **Article 5. Eligibility and Participation**

**5.1 Eligibility.** Persons eligible to participate in this Plan are all Key Associates of the Company, as determined by the Committee, including Key Associates who are Directors, but excluding Directors who are not Key Associates.

**5.2 Actual Participation.** Subject to the provisions of the Plan, the Committee may, from time to time, select from all eligible Key Associates those to whom Awards shall be granted and shall determine the nature and amount of each Award.

**5.3 Non-U.S. Associates.** Notwithstanding any provision of the Plan to the contrary, in order to foster and promote achievement of the purposes of the Plan or to comply with provisions of laws in other countries in which the Company operates or has employees, the Committee, in its sole discretion, shall have the power and authority to (i) determine which Key Associates (if any) employed outside the United States are eligible to participate in the Plan, (ii) modify the terms and conditions of any Awards made to such Key Associates and (iii) establish subplans and modified Option exercise and other terms and procedures to the extent such actions may be necessary or advisable.

### **Article 6. Stock Options**

**6.1 Grant of Options.** Subject to the terms and provisions of the Plan, Options may be granted to Key Associates in such number, and upon such terms, and at any time and from time to time as shall be determined by the Committee.

**6.2 Award Agreement.** Each Option grant shall be evidenced by an Award Agreement that shall specify the Option Price, the duration of the Option, the number of Shares to which the Option pertains, and such other provisions as the Committee shall determine. The Award Agreement also shall specify whether the Option is intended to be an ISO within the meaning of Section 422 of the Code, or an NQSO whose grant is intended not to fall under Code Section 422, and whether the Option shall include any Restoration Options.

**6.3 Option Price.** The Option Price for each grant of an Option under this Plan shall be at least equal to one hundred percent (100%) of the Fair Market Value of a Share on the date the Option is granted.

**6.4 Duration of Options.** Each Option shall expire at such time as the Committee shall determine at the time of grant *provided, however*, that no Option shall be exercisable later than the tenth (10th) anniversary date of its grant.

**6.5 Exercise of Options.** Options granted under this Article 6 shall be exercisable at such times and be subject to such restrictions and conditions as the Committee shall in each instance approve and which shall be set forth in the applicable Award Agreement, which need not be the same for each grant or for each Participant.

**6.6 Payment.** Options shall be exercised by the delivery of a notice of exercise to the Company, setting forth the number of Shares with respect to which the Option is to be exercised,

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## Table of Contents

accompanied by full payment for the Shares. To be effective, notice of exercise must be made in accordance with procedures established by the Company from time to time.

The Option Price due upon exercise of any Option shall be payable to the Company in full either: (a) in cash or its equivalent, or (b) by tendering previously acquired Shares having an aggregate Fair Market Value at the time of exercise equal to the total Option Price (provided that the Shares which are tendered must have been held by the Participant for at least six (6) months prior to their tender to satisfy the Option Price unless such Shares had been acquired by the Participant on the open market), or (c) by a combination of (a) and (b).

As soon as practicable after notification of exercise and full payment, the Company shall deliver the Shares to the Participant in an appropriate amount based upon the number of Shares purchased under the Option(s).

Notwithstanding the foregoing, the Committee also may allow (i) cashless exercises as permitted under Federal Reserve Board's Regulation T, subject to applicable securities law restrictions, or (ii) exercises by any other means which the Committee determines to be consistent with the Plan's purpose and applicable law.

**6.7 Restrictions on Share Transferability.** The Committee may impose such restrictions on any Shares acquired pursuant to the exercise of an Option granted under this Article 6 as it may deem advisable, including, without limitation, restrictions under applicable Federal securities laws, under the requirements of any stock exchange or market upon which such Shares are then listed and/or traded, and under any blue sky or state securities laws applicable to such Shares.

**6.8 Termination of Employment.** Each Participant's Option Award Agreement shall set forth the extent to which the Participant shall have the right to exercise the Option following termination of the Participant's employment with the Company and its Subsidiaries. Such provisions shall be determined in the sole discretion of the Committee, shall be included in the Award Agreement entered into with Participants, need not be uniform among all Options issued pursuant to this Article 6, and may reflect distinctions based on the reasons for termination of employment. In that regard, if an Award Agreement permits exercise of an Option following the death of the Participant, the Award Agreement shall provide that such Option shall be exercisable to the extent provided therein by any person that may be empowered to do so under the Participant's will, or if the Participant shall fail to make a testamentary disposition of the Option or shall have died intestate, by the Participant's executor or other legal representative.

### **6.9 Nontransferability of Options.**

(a) **Incentive Stock Options.** No ISO granted under this Article 6 may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, all ISOs granted to a Participant under the Plan shall be exercisable during his or her lifetime only by such Participant except to the extent otherwise permitted by applicable law.

(b) **Nonqualified Stock Options.** Except as otherwise provided in a Participant's Award Agreement, no NQSO granted under this Article 6 may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, except as otherwise provided in a Participant's Award Agreement, all NQSOs granted to a Participant under this Article 6 shall be exercisable during his or her lifetime only by such Participant.

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## Table of Contents

**6.10 Restoration Options.** An Option may provide for the automatic grant of Restoration Options if the exercise price for the Option is paid by tendering previously-owned Shares pursuant to Section 6.6 above or if the Participant tenders Shares to cover any tax withholding obligation pursuant to Section 15.2 below. The Restoration Option shall have the following additional terms and provisions: (i) the number of Shares subject to the Restoration Option will equal the number of previously-owned Shares tendered in the exercise of the related Option or to cover the tax withholding obligation, as applicable; (ii) the grant date of the Restoration Option will be the exercise date of the related Option; (iii) the Option Price per Share under a Restoration Option will be the Fair Market Value of a Share on the grant date for the Restoration Option; (iv) the term of the Restoration Option will be the original term of the related Option; (v) the Restoration Option will be either an Incentive Stock Option (to the maximum extent permitted under Section 422 of the Code) or a Nonqualified Stock Option consistent with the related Option; (vi) the Restoration Option will be subject to a vesting requirement of not less than one (1) year (subject to certain exceptions such as death, Disability, retirement, workforce reduction, job elimination or divestiture as may be specified in the related Option Award Agreement); (vii) no more than three (3) Restoration Options may be granted with respect to an Option; and (viii) the Restoration Option will have such other terms and provisions as the Committee may determine and as may be set forth in the related Option Award Agreement.

**6.11 No Rights.** A Participant granted an Option shall have no rights as a stockholder of the Company with respect to the Shares covered by such Option except to the extent that Shares are issued to the Participant upon the due exercise of the Option.

**6.12 No Repricing.** Except for adjustments made pursuant to Section 4.6, the Option Price for any outstanding Option granted under the Plan may not be decreased after the date of grant nor may any outstanding Option granted under the Plan be surrendered to the Company as consideration for the grant of a new Option with a lower exercise price without approval of the Company's stockholders.

### **Article 7. Stock Appreciation Rights**

**7.1 Grant of SARs.** Subject to the terms and conditions of the Plan, SARs may be granted to Key Associates at any time and from time to time as shall be determined by the Committee. The Committee shall have complete discretion in determining the number of SARs granted to each Participant (subject to Article 4 herein) and, consistent with the provisions of the Plan, in determining the terms and conditions pertaining to such SARs; *provided, however*, that Awards of SARs shall be limited Key Associates based outside the United States in circumstances where other forms of Award would not be appropriate under local laws or otherwise as determined by the Committee. The grant price of an SAR shall equal the Fair Market Value of a Share on the date of grant of the SAR.

**7.2 Exercise of SARs.** SARs may be exercised upon whatever terms and conditions the Committee, in its sole discretion, imposes upon them.

**7.3 SAR Agreement.** Each SAR grant shall be evidenced by an Award Agreement that shall specify the grant price, the term of the SAR, and such other provisions as the Committee shall determine.

**7.4 Term of SARs.** The term of an SAR granted under the Plan shall be determined by the Committee, in its sole discretion *provided, however*, that such term shall not exceed ten (10) years.

**7.5 Payment of SAR Amount.** Upon exercise of an SAR, a Participant shall be entitled to receive payment from the Company in an amount determined by multiplying:

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## Table of Contents

- (a) The difference between the Fair Market Value of a Share on the date of exercise over the grant price; by
- (b) The number of Shares with respect to which the SAR is exercised.

At the discretion of the Committee or as otherwise provided in the applicable Award Agreement, the payment upon SAR exercise shall be in cash, in Shares of equivalent value, or in some combination thereof.

**7.6 Other Restrictions.** Notwithstanding any other provision of the Plan, the Committee may impose such conditions on exercise of an SAR (including, without limitation, the right of the Committee to limit the time of exercise to specified periods) as may be required to satisfy the requirements of Section 16 (or any successor rule) of the Exchange Act or for any other purpose deemed appropriate by the Committee.

**7.7 Termination of Employment.** Each SAR Award Agreement shall set forth the extent to which the Participant shall have the right to exercise the SAR following termination of the Participant's employment with the Company and its Subsidiaries. Such provisions shall be determined in the sole discretion of the Committee, shall be included in the Award Agreement entered into with Participants, need not be uniform among all SARs issued pursuant to the Plan, and may reflect distinctions based on the reasons for termination of employment. In that regard, if an Award Agreement permits exercise of an SAR following the death of the Participant, the Award Agreement shall provide that such SAR shall be exercisable to the extent provided therein by any person that may be empowered to do so under the Participant's will, or if the Participant shall fail to make a testamentary disposition of the SAR or shall have died intestate, by the Participant's executor or other legal representative.

**7.8 Nontransferability of SARs.** Except as otherwise provided in a Participant's Award Agreement, no SAR granted under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, except as otherwise provided in a Participant's Award Agreement, all SARs granted to a Participant under the Plan shall be exercisable during his or her lifetime only by such Participant.

**7.9 No Rights.** A Participant granted an SAR shall have no rights as a stockholder of the Company with respect to the Shares covered by such SAR except to the extent that Shares are issued to the Participant upon the due exercise of the SAR.

### **Article 8. Restricted Stock and Restricted Stock Units**

**8.1 Grant of Restricted Stock.** Subject to the terms and provisions of the Plan, the Committee, at any time and from time to time, may grant Shares of Restricted Stock or Restricted Stock Units to eligible Key Associates in such amounts as the Committee shall determine.

**8.2 Restricted Stock Agreement.** Each grant of Restricted Stock or Restricted Stock Units shall be evidenced by an Award Agreement that shall specify the Period or Periods of Restriction, the number of Shares of Restricted Stock or the number of Restricted Stock Units granted, and such other provisions as the Committee shall determine.

**8.3 Transferability.** Except as provided in this Article 8, the Shares of Restricted Stock or Restricted Stock Units granted herein may not be sold, transferred, pledged, assigned, or otherwise

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## Table of Contents

alienated or hypothecated until the end of the applicable Period of Restriction established by the Committee and specified in the Award Agreement, or upon earlier satisfaction of any other conditions, as specified by the Committee in its sole discretion and set forth in the Award Agreement. All rights with respect to the Restricted Stock or Restricted Stock Units granted to a Participant under the Plan shall be available during his or her lifetime only to such Participant.

**8.4 Other Restrictions.** The Committee shall impose such other conditions and/or restrictions on any Shares of Restricted Stock or Restricted Stock Units granted pursuant to the Plan as it may deem advisable including, without limitation, a requirement that Participants pay a stipulated purchase price for each Share of Restricted Stock or each Restricted Stock Unit, restrictions based upon the achievement of specific performance goals (Company-wide, divisional, and/or individual), time-based restrictions on vesting following the attainment of the performance goals, and/or restrictions under applicable Federal or state securities laws.

The Company shall retain the Shares of Restricted Stock in the Company's possession until such time as all conditions and/or restrictions applicable to such Shares have been satisfied.

Except as otherwise provided in this Article 8, Shares of Restricted Stock covered by each Restricted Stock grant made under the Plan shall become freely transferable by the Participant after the last day of the Period of Restriction.

**8.5 Settlement of Restricted Stock Units.** Any Restricted Stock Units that become payable in accordance with the terms and conditions of the applicable Award Agreement shall be settled in cash, Shares, or a combination of cash and Shares as determined by the Committee in its discretion or as otherwise provided for under the Award Agreement.

**8.6 Voting Rights.** During the Period of Restriction, Participants holding Shares of Restricted Stock granted hereunder may exercise full voting rights with respect to those Shares. There shall be no voting rights with respect to Restricted Stock Units.

**8.7 Dividends and Other Distributions.** During the Period of Restriction, Participants holding Shares of Restricted Stock granted hereunder may receive regular cash dividends paid with respect to the underlying Shares while the Restricted Stock is held by the Company. The Committee may apply any restrictions to the dividends that the Committee deems appropriate. The Committee, in its discretion, may also grant dividend equivalents rights with respect to earned but unpaid Restricted Stock Units as evidenced by the applicable Award Agreement.

**8.8 Termination of Employment.** Each Restricted Stock or Restricted Stock Unit Award Agreement shall set forth the extent to which the Participant shall have the right to receive unvested Restricted Shares or Restricted Stock Units following termination of the Participant's employment with the Company and its Subsidiaries. Such provisions shall be determined in the sole discretion of the Committee, shall be included in the Award Agreement entered into with Participants, need not be uniform among all Shares of Restricted Stock or Restricted Stock Units issued pursuant to the Plan, and may reflect distinctions based on the reasons for termination of employment. In amplification but not limitation of the foregoing, in the case of an award of Restricted Stock or Restricted Stock Units to a Named Executive Officer which is intended to qualify for the Performance-Based Exception, the Award Agreement may provide that such Restricted Stock or Restricted Stock Units may become payable in the event of a termination of employment by reason of death, Disability or Change in Control, regardless of whether the related performance goal has been previously attained.

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## [Table of Contents](#)

**8.9 Limitation on Vesting for Certain Awards.** Notwithstanding any provision of the Plan to the contrary, an Award of Restricted Stock or Restricted Stock Units that vests solely on the basis of the passage of time (e.g., not on the basis of any performance standards) shall not vest more quickly than ratably over the three (3) year period beginning on the first anniversary of the Award, except that the Award may vest sooner under any of the following circumstances as more specifically set forth in the applicable Award Agreement: (i) the Participant's death, (ii) the Participant's Disability, (iii) the Participant's "retirement" as defined in the Award Agreement consistent with the Company's retirement policies and programs, (iv) a Participant's termination of employment with the Company and its Subsidiaries due to workforce reduction, job elimination or divestiture as determined by the Committee, (v) a Change in Control consistent with the provisions of Article 13 hereof or (vi) in connection with establishing the terms and conditions of employment of a Key Associate necessary for the recruitment of the Key Associate or as the result of a business combination or acquisition by the Company or any of its Subsidiaries. The provisions of this Section 8.9 shall not apply to any Award of Restricted Stock or Restricted Stock Units that is made to a Key Associate as a portion of the Key Associate's annual incentive compensation under the Company's Equity Incentive Plan (or any similar plan or program as determined by the Committee applicable to any Key Associate, including any such program applicable to an Insider or Named Executive Officer).

### **Article 9. Performance Measures**

The performance measure(s) to be used for purposes of Awards to Named Executive Officers which are designed to qualify for the Performance-Based Exception shall be chosen from among the following alternatives:

- Earnings Per Share;
- Net Income;
- Operating Earnings Per Share
- Return On Assets;
- Return On Equity;
- Shareholder Value Added;
- Total Revenue; or
- Total Stockholder Return.

The Committee shall have the discretion to adjust the determinations of the degree of attainment of the preestablished performance goals; *provided, however*, that Awards which are designed to qualify for the Performance-Based Exception, and which are held by Named Executive Officers, may not be adjusted upward (the Committee shall retain the discretion to adjust such Awards downward).

In the event that applicable tax and/or securities laws change to permit Committee discretion to alter the governing performance measures without obtaining stockholder approval of such changes, the Committee shall have sole discretion to make such changes without obtaining stockholder approval.

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## Table of Contents

### **Article 10. Beneficiary Designation**

Each Participant under the Plan may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under the Plan is to be paid in case of his or her death before he or she receives any or all of such benefit. Each such designation shall revoke all prior designations by the same Participant, shall be in a form prescribed by the Company, and will be effective only when filed by the Participant in writing with the Company during the Participant's lifetime. In the absence of any such designation, benefits remaining unpaid at the Participant's death shall be paid to the Participant's estate.

### **Article 11. Deferrals**

The Committee may permit a Participant to defer such Participant's receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant by virtue of the exercise of an Option or SAR or the lapse or waiver of restrictions with respect to Restricted Stock or Restricted Stock Units. If any such deferral election is required or permitted, the Committee shall, in its sole discretion, establish rules and procedures for such payment deferrals.

### **Article 12. Rights of Key Associates**

**12.1 Employment.** Nothing in the Plan shall interfere with or limit in any way the right of the Company to terminate any Participant's employment at any time, nor confer upon any Participant any right to continue in the employ of the Company.

For purposes of this Plan, a transfer of a Participant's employment between the Company and a Subsidiary, or between Subsidiaries, shall not be deemed to be a termination of employment. Upon such a transfer, the Committee may make such adjustments to outstanding Awards as it deems appropriate to reflect the changed reporting relationships.

**12.2 Participation.** No Key Associate shall have the right to be selected to receive an Award under this Plan, or, having been so selected, to be selected to receive a future Award.

### **Article 13. Change in Control**

**13.1 Treatment of Outstanding Awards.** Upon the occurrence of a Change in Control, unless otherwise specifically prohibited under applicable laws, or by the rules and regulations of any governing governmental agencies or national securities exchanges:

- (a) Any and all outstanding Options and SARs held by persons employed with the Company or any Subsidiary on the date of the Change in Control shall become immediately exercisable, and shall remain exercisable throughout their entire term;
- (b) Any restriction periods and restrictions imposed on outstanding Shares of Restricted Stock or Restricted Stock Units held by persons employed with the Company or any Subsidiary on the date of the Change in Control shall lapse;
- (c) If applicable, the target payout opportunities attainable under all outstanding Awards of Restricted Stock or Restricted Stock Units held by persons employed with the Company or any Subsidiary on the date of the Change in Control

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## Table of Contents

shall be deemed to have been fully earned for the entire performance period(s) as of the effective date of the Change in Control, and the vesting of all such Awards shall be accelerated as of the effective date of the Change in Control; and

(d) Subject to Article 14 herein, the Committee shall have the authority to make any modifications to the Awards as determined by the Committee to be appropriate before the effective date of the Change in Control.

**13.2 Limitation on Change-in-Control Benefits.** It is the intention of the Company and the Participants to reduce the amounts payable or distributable to a Participant hereunder if the aggregate Net After Tax Receipts (as defined below) to the Participant would thereby be increased, as a result of the application of the excise tax provisions of Section 4999 of the Code. Accordingly, anything in this Plan to the contrary notwithstanding, in the event that the certified public accountants regularly employed by the Company immediately prior to any “change” described below (the “Accounting Firm”) shall determine that receipt of all Payments (as defined below) would subject the Participant to tax under Section 4999 of the Code, it shall determine whether some amount of Payments would meet the definition of a “Reduced Amount” (as defined below). If the Accounting Firm determines that there is a Reduced Amount, the aggregate Payments shall be reduced to such Reduced Amount in accordance with the provisions of Section 13.2(b) below.

(a) For purposes of this Section 13.2(a):

(i) A “Payment” shall mean any payment or distribution in the nature of compensation to or for the benefit of a Participant who is a “disqualified individual” within the meaning of Section 280G(c) of the Code and which is contingent on a “change” described in Section 280G(b)(2)(A)(i) of the Code with respect to the Company, whether paid or payable pursuant to this Plan or otherwise;

(ii) “Plan Payment” shall mean a Payment paid or payable pursuant to this Plan (disregarding this Section 13.2);

(iii) “Net After Tax Receipt” shall mean the Present Value of a Payment, net of all taxes imposed on the Participant with respect thereto under Sections 1 and 4999 of the Code, determined by applying the highest marginal rate under Section 1 of the Code which applied to the Participant’s Federal taxable income for the immediately preceding taxable year;

(iv) “Present Value” shall mean such value determined in accordance with Section 280G(d)(4) of the Code; and

(v) “Reduced Amount” shall mean the smallest aggregate amount of Payments which (A) is less than the sum of all Payments and (B) results in aggregate Net After Tax Receipts which are equal to or greater than the Net After Tax Receipts which would result if all Payments were paid to or for the benefit of the Participant.

(b) If the Accounting Firm determines that aggregate Payments should be reduced to the Reduced Amount, the Committee shall promptly give the Participant notice to that effect and a copy of the detailed calculation thereof, and the Participant may then elect, in the Participant’s sole discretion, which and how much of the Payments,

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## Table of Contents

including without limitation Plan Payments, shall be eliminated or reduced (as long as after such election the Present Value of the aggregate Payments is equal to the Reduced Amount), and shall advise the Committee in writing of such election within ten (10) days of the Participant's receipt of notice. If no such election is made by the Participant within such ten (10) day period, the Committee may elect which of the Payments, including without limitation Plan Payments, shall be eliminated or reduced (as long as after such election the Present Value of the aggregate Payments is equal to the Reduced Amount) and shall notify the Participant promptly of such election. All determinations made by the Accounting Firm under this Section 13.2 shall be binding upon the Company and the Participant and shall be made within sixty (60) days immediately following the event constituting the "change" referred to above. As promptly as practicable following such determination, the Company shall pay to or distribute for the benefit of the Participant such Payments as are then due to the Participant under this Plan.

(c) At the time of the initial determination by the Accounting Firm hereunder, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of the Participant pursuant to this Plan which should not have been so paid or distributed ("Overpayment") or that additional amounts which will have not been paid or distributed by the Company to or for the benefit of the Participant pursuant to this Plan could have been so paid or distributed ("Underpayment"), in each case, consistent with the calculation of the Reduced Amount hereunder. In the event that the Accounting Firm, based either upon the assertion of a deficiency by the Internal Revenue Service against the Company or the Participant which the Accounting Firm believes has a high probability of success or controlling precedent or other substantial authority, determines that an Overpayment has been made, any such Overpayment paid or distributed by the Company to or for the benefit of the Participant shall be treated for all purposes as a loan ab initio to the Participant which the Participant shall repay to the Company together with interest at the applicable Federal rate provided for in Section 7872(f)(2) of the Code; *provided, however*, that no such loan shall be deemed to have been made and no amount shall be payable by the Participant to the Company if and to the extent such deemed loan and payment would not either reduce the amount on which the Participant is subject to tax under Section 1 and Section 4999 of the Code or generate a refund of such taxes.

In the event that the Accounting Firm, based upon controlling precedent or other substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be promptly paid by the Company to or for the benefit of the Participant together with interest at the applicable Federal rate provided for in Section 7872(f)(2) of the Code.

**13.3 Termination, Amendment, and Modifications of Change-in-Control Provisions.** Notwithstanding any other provision of this Plan or any Award Agreement provision, the provisions of this Article 13 may not be terminated, amended, or modified on or after the date of a Change in Control to affect adversely any Award theretofore granted under the Plan without the prior written consent of the Participant with respect to said Participant's outstanding Awards; *provided, however*, the Board of Directors, upon recommendation of the Committee, may terminate, amend, or modify this Article 13 at any time and from time to time prior to the date of a Change in Control.

### **Article 14. Amendment, Modification, and Termination**

**14.1 Amendment, Modification, and Termination.** The Board may at any time and from time to time, alter, amend, suspend or terminate the Plan in whole or in part; *provided, however*, that an

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## Table of Contents

amendment to the Plan may be conditioned on the approval of the stockholders of the Company if and to the extent the Board determines that stockholder approval is necessary or appropriate.

**14.2 Awards Previously Granted.** No termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted under the Plan, without the written consent of the Participant holding such Award.

**14.3 Acceleration of Award Vesting; Waiver of Restrictions.** Notwithstanding any provision of this Plan or any Award Agreement provision to the contrary, the Committee, in its sole and exclusive discretion, shall have the power at any time to (i) accelerate the vesting of any Award granted under the Plan, including, without limitation, acceleration to such a date that would result in said Awards becoming immediately vested, or (ii) waive any restrictions of any Award granted under the Plan.

**14.4 No Repricing.** Nothing in the provisions of this Article 14 shall be construed to permit the repricing of any outstanding Option as otherwise prohibited by the provisions of Section 6.12.

### **Article 15. Withholding**

**15.1 Tax Withholding.** The Company shall have the power and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy Federal, state, and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to any taxable event arising as a result of this Plan.

**15.2 Share Withholding.** The Company may cause any tax withholding obligation described in Section 15.1 to be satisfied by the Company withholding Shares having a Fair Market Value on the date the tax is to be determined equal to the minimum statutory total tax which could be imposed on the transaction. In the alternative, the Company may permit Participants to elect to satisfy the tax withholding obligation, in whole or in part, by either (i) having the Company withhold Shares having a Fair Market Value on the date the tax is to be determined equal to the minimum statutory total tax which could be imposed on the transaction or (ii) tendering previously acquired Shares having an aggregate Fair Market Value equal to the minimum statutory total tax which could be imposed on the transaction (provided that the Shares which are tendered must have been held by the Participant for at least six (6) months prior to their tender unless such Shares had been acquired by the Participant on the open market). All such elections shall be irrevocable, made in writing, signed by the Participant, and shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate.

### **Article 16. Indemnification**

Provisions for the indemnification of officers and directors of the Company in connection with the administration of the Plan shall be as set forth in the Company's Certificate of Incorporation and Bylaws as in effect from time to time.

### **Article 17. Successors**

All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

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[Table of Contents](#)

**Article 18. Legal Construction**

**18.1 Gender and Number.** Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

**18.2 Severability.** In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

**18.3 Requirements of Law.** The granting of Awards and the issuance of Shares under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

**18.4 Securities Law Compliance.** With respect to Insiders, transactions under this Plan are intended to comply with all applicable conditions of Rule 16b-3 or its successors under the Exchange Act. To the extent any provision of the plan or action by the Committee fails to so comply, it shall be deemed null and void, to the extent permitted by law and deemed advisable by the Committee.

**18.5 No Conflict.** Unless otherwise provided for by an Award Agreement, in the event of any conflict between the terms of the Plan and the terms of an Award Agreement, the terms of the Plan shall control.

**18.6 Governing Law.** To the extent not preempted by Federal law, the Plan, and all agreements hereunder, shall be construed in accordance with and governed by the laws of the State of Delaware.