

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

**(Mark One)**

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2009

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number:

1-6523

Exact name of registrant as specified in its charter:

**Bank of America Corporation**

State or other jurisdiction of incorporation or organization:

Delaware

IRS Employer Identification No.:

56-0906609

Address of principal executive offices:

Bank of America Corporate Center

100 N. Tryon Street

Charlotte, North Carolina 28255

Registrant's telephone number, including area code:

(704) 386-5681

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

**Title of each class**

Common Stock

**Name of each exchange on which registered**

New York Stock Exchange

London Stock Exchange

Tokyo Stock Exchange

Depository Shares, each Representing a 1/1,000<sup>th</sup> interest in a share of  
6.204% Non-Cumulative Preferred Stock, Series D

Depository Shares, each Representing a 1/1,000<sup>th</sup> interest in a share of  
Floating Rate Non-Cumulative Preferred Stock, Series E

Depository Shares, each Representing a 1/1,000<sup>th</sup> interest in a share of 8.20% Non-Cumulative Preferred Stock, Series H

Depository Shares, each Representing a 1/1,000<sup>th</sup> interest in a share of 6.625% Non-Cumulative Preferred Stock, Series I

Depository Shares, each Representing a 1/1,000<sup>th</sup> interest in a share of 7.25% Non-Cumulative Preferred Stock, Series J

7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L

Depository Shares, each representing a 1/1,200<sup>th</sup> interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 1

Depository Shares, each representing a 1/1,200<sup>th</sup> interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 2

Depository Shares, each representing a 1/1,200<sup>th</sup> interest in a share of Bank of America Corporation 6.375% Non-Cumulative Preferred Stock, Series 3

Depository Shares, each representing a 1/1,200<sup>th</sup> interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 4

Depository Shares, each representing a 1/1,200<sup>th</sup> interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 5

Depository Shares, each representing a 1/40<sup>th</sup> interest in a share of Bank of America Corporation 6.70% Non-cumulative Perpetual Preferred Stock, Series 6

Depository Shares, each representing a 1/40<sup>th</sup> interest in a share of Bank of America Corporation 6.25% Non-cumulative Perpetual Preferred Stock, Series 7

Depository Shares, each representing a 1/1,200<sup>th</sup> interest in a share of Bank of America Corporation 8.625% Non-Cumulative Preferred Stock, Series 8

6.75% Trust Preferred Securities of Countrywide Capital IV (and the guarantees related thereto)

7.00% Capital Securities of Countrywide Capital V (and the guarantees related thereto)

Capital Securities of BAC Capital Trust I (and the guarantee related thereto)

Capital Securities of BAC Capital Trust II (and the guarantee related thereto)

Capital Securities of BAC Capital Trust III (and the guarantee related thereto)

5 <sup>7</sup>/<sub>8</sub>% Capital Securities of BAC Capital Trust IV (and the guarantee related thereto)

6% Capital Securities of BAC Capital Trust V (and the guarantee related thereto)

6% Capital Securities of BAC Capital Trust VIII (and the guarantee related thereto)

6 <sup>1</sup>/<sub>4</sub>% Capital Securities of BAC Capital Trust X (and the guarantee related thereto)

6 <sup>7</sup>/<sub>8</sub>% Capital Securities of BAC Capital Trust XII (and the guarantee related thereto)

Floating Rate Preferred Hybrid Income Term Securities of BAC Capital Trust XIII (and the guarantee related thereto)

5.63% Fixed to Floating Rate Preferred Hybrid Income Term Securities of BAC Capital Trust XIV (and the guarantee related thereto)

New York Stock Exchange

New York Stock Exchange

New York Stock Exchange

New York Stock Exchange

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<b>Title of each class</b>	<b>Name of each exchange on which registered</b>
Minimum Return Index EAGLES <sup>SM</sup> , due June 1, 2010, Linked to the Nasdaq-100 Index <sup>®</sup>	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due June 28, 2010, Linked to the S&P 500 <sup>®</sup> Index	NYSE Amex
Minimum Return – Return Linked Notes, due June 24, 2010, Linked to the Nikkei 225 Index	NYSE Amex
Minimum Return Basket EAGLES <sup>SM</sup> , due August 2, 2010, Linked to a Basket of Energy Stocks	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due October 29, 2010, Linked to the Nasdaq-100 Index <sup>®</sup>	NYSE Amex
1.50% Index CYCLES <sup>TM</sup> , due November 26, 2010, Linked to the S&P 500 <sup>®</sup> Index	NYSE Amex
1.00% Index CYCLES <sup>TM</sup> , due December 28, 2010, Linked to the S&P MidCap 400 Index	NYSE Amex
Return Linked Notes due June 28, 2010, Linked to the Nikkei 225 Index	NYSE Amex
1.00% Index CYCLES <sup>TM</sup> , due January 28, 2011, Linked to a Basket of Health Care Stocks	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due January 28, 2011, Linked to the Russell 2000 <sup>®</sup> Index	NYSE Amex
1.00% Basket CYCLES <sup>TM</sup> , due May 27, 2010, Linked to a “70/30” Basket of Four Indices and an Exchange Traded Fund	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due June 25, 2010, Linked to the Dow Jones Industrial Average <sup>SM</sup>	NYSE Amex
1.50% Basket CYCLES <sup>TM</sup> , due July 29, 2011, Linked to an “80/20” Basket of Four Indices and an Exchange Traded Fund	NYSE Amex
1.25% Index CYCLES <sup>TM</sup> , due August 25, 2010, Linked to the Dow Jones Industrial Average <sup>SM</sup>	NYSE Amex
1.25% Basket CYCLES <sup>TM</sup> , due September 27, 2011, Linked to a Basket of Four Indices	NYSE Amex
Minimum Return Basket EAGLES <sup>SM</sup> , due September 29, 2010, Linked to a Basket of Energy Stocks	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due October 29, 2010, Linked to the S&P 500 <sup>®</sup> Index	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due November 23, 2010, Linked to the Nasdaq-100 Index <sup>®</sup>	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due November 24, 2010, Linked to the CBOE China Index	NYSE Amex
1.25% Basket CYCLES <sup>TM</sup> , due December 27, 2010, Linked to a “70/30” Basket of Four Indices and an Exchange Traded Fund	NYSE Amex
1.50% Index CYCLES <sup>TM</sup> , due December 28, 2011, Linked to a Basket of Health Care Stocks	NYSE Amex
6 1/2% Subordinated InterNotes <sup>SM</sup> , due 2032	New York Stock Exchange
5 1/2% Subordinated InterNotes <sup>SM</sup> , due 2033	New York Stock Exchange
5 7/8% Subordinated InterNotes <sup>SM</sup> , due 2033	New York Stock Exchange
6% Subordinated InterNotes <sup>SM</sup> , due 2034	New York Stock Exchange
Minimum Return Index EAGLES <sup>®</sup> , due March 25, 2011, Linked to the Dow Jones Industrial Average <sup>SM</sup>	NYSE Amex
1.625% Index CYCLES <sup>TM</sup> , due March 23, 2010, Linked to the Nikkei 225 Index	NYSE Amex
1.75% Index CYCLES <sup>TM</sup> , due April 28, 2011, Linked to the S&P 500 <sup>®</sup> Index	NYSE Amex
Return Linked Notes, due August 26, 2010, Linked to a Basket of Three Indices	NYSE Amex
Return Linked Notes, due June 27, 2011, Linked to an “80/20” Basket of Four Indices and an Exchange Traded Fund	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due July 29, 2010, Linked to the S&P 500 <sup>®</sup> Index	NYSE Amex
Return Linked Notes, due January 28, 2011, Linked to a Basket of Two Indices	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due August 26, 2010, Linked to the Dow Jones Industrial Average <sup>SM</sup>	NYSE Amex
Return Linked Notes, due August 25, 2011, Linked to the Dow Jones EURO STOXX 50 <sup>®</sup> Index	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due October 3, 2011, Linked to the S&P 500 <sup>®</sup> Index	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due October 28, 2011, Linked to the AMEX Biotechnology Index	NYSE Amex
Return Linked Notes, due October 27, 2011, Linked to a Basket of Three Indices	NYSE Amex
Return Linked Notes, due November 22, 2010, Linked to a Basket of Two Indices	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due November 23, 2011, Linked to a Basket of Five Indices	NYSE Amex
Minimum Return Index EAGLES <sup>®</sup> , due December 27, 2011, Linked to the Dow Jones Industrial Average <sup>SM</sup>	NYSE Amex
0.25% Senior Notes Optionally Exchangeable Into a Basket of Three Common Stocks, due February 2012	NYSE Amex
Return Linked Notes, due December 29, 2011 Linked to a Basket of Three Indices	NYSE Amex
Bear Market Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the iShares <sup>®</sup> Dow Jones U.S. Real Estate Index Fund, due August 3, 2010	NYSE Arca, Inc.
Accelerated Return Notes <sup>SM</sup> , Linked to the S&P 500 <sup>®</sup> Index, due April 5, 2010	NYSE Arca, Inc.
Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due February 1, 2011	NYSE Arca, Inc.
Strategic Accelerated Redemption Securities <sup>®</sup> Linked to the S&P 500 <sup>®</sup> Index, due January 11, 2012	NYSE Arca, Inc.
Market-Linked Step Up Notes Linked to the S&P 500 <sup>®</sup> Index, due December 23, 2011	NYSE Arca, Inc.
Strategic Accelerated Redemption Securities <sup>®</sup> Linked to the S&P 500 <sup>®</sup> Index, due December 5, 2011	NYSE Arca, Inc.
Market-Linked Step Up Notes Linked to the S&P 500 <sup>®</sup> Index, due November 26, 2012	NYSE Arca, Inc.
Market Index Target-Term Securities <sup>®</sup> Linked to the Dow Jones Industrial Average <sup>SM</sup> , due December 2, 2014	NYSE Arca, Inc.
Market-Linked Step Up Notes Linked to the S&P 500 <sup>®</sup> Index, due November 28, 2011	NYSE Arca, Inc.
Market-Linked Step Up Notes Linked to the S&P 500 <sup>®</sup> Index, due October 28, 2011	NYSE Arca, Inc.
Market-Linked Step Up Notes Linked to the Russell 2000 <sup>®</sup> Index, due October 28, 2011	NYSE Arca, Inc.
Notes Linked to the S&P 500 <sup>®</sup> Index, due October 4, 2011	NYSE Arca, Inc.
Market Index Target-Term Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due September 27, 2013	NYSE Arca, Inc.
Accelerated Return Notes <sup>®</sup> Linked to the S&P 500 <sup>®</sup> Index, due October 29, 2010	NYSE Arca, Inc.
Leveraged Index Return Notes <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due July 27, 2012	NYSE Arca, Inc.
Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due August 2, 2011	NYSE Arca, Inc.
Market Index Target-Term Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due July 26, 2013	NYSE Arca, Inc.
Leveraged Index Return Notes <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due June 29, 2012	NYSE Arca, Inc.
Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the iShares <sup>®</sup> FTSE/Xinhua 25 Index Fund, due June 1, 2011	NYSE Arca, Inc.
Accelerated Return Notes <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due July 30, 2010	NYSE Arca, Inc.
Leveraged Index Return Notes <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due June 1, 2012	NYSE Arca, Inc.
Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due June 1, 2011	NYSE Arca, Inc.
Market Index Target-Term Securities <sup>®</sup> , Linked to the Dow Jones Industrial Average <sup>SM</sup> , due May 31, 2013	NYSE Arca, Inc.
Capped Leveraged Index Return Notes <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due November 29, 2010	NYSE Arca, Inc.
Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the SPDR <sup>®</sup> Gold Trust, due May 3, 2011	NYSE Arca, Inc.
Market Index Target-Term Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due April 25, 2014	NYSE Arca, Inc.
Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due April 5, 2011	NYSE Arca, Inc.
Bear Market Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the iShares <sup>®</sup> Dow Jones U.S. Real Estate Index Fund, due September 30, 2010	NYSE Arca, Inc.
Market Index Target-Term Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due March 28, 2014	NYSE Arca, Inc.
Capped Leveraged Index Return Notes <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due August 27, 2010	NYSE Arca, Inc.
Bear Market Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the S&P Small Cap Regional Banks Index, due August 31, 2010	NYSE Arca, Inc.
Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due March 1, 2011	NYSE Arca, Inc.
Market Index Target-Term Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due February 28, 2014	NYSE Arca, Inc.
Accelerated Return Notes <sup>SM</sup> , Linked to the S&P 500 <sup>®</sup> Index, due April 5, 2010	NYSE Arca, Inc.
Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the S&P 500 <sup>®</sup> Index, due February 1, 2011	NYSE Arca, Inc.
Bear Market Strategic Accelerated Redemption Securities <sup>®</sup> , Linked to the iShares <sup>®</sup> Dow Jones U.S. Real Estate Index Fund, due August 3, 2010	NYSE Arca, Inc.

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Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer  Accelerated filer Non-accelerated filer (do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the registrant's common stock ("Common Stock") held by non-affiliates is approximately \$114,282,338,121 (based on the June 30, 2009 closing price of Common Stock of \$13.20 per share as reported on the New York Stock Exchange). As of February 24, 2010, there were 10,032,005,453 shares of Common Stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Document of the Registrant

Portions of the 2010 Proxy Statement

Form 10-K Reference Locations

PART III

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# Part I

## Bank of America Corporation and Subsidiaries

### Item 1. Business

#### General

Bank of America Corporation (together, with its consolidated subsidiaries, Bank of America, the Corporation, our company, we or us) is a Delaware corporation, a bank holding company and a financial holding company under the Gramm-Leach-Bliley Act. Our principal executive offices are located in the Bank of America Corporate Center, Charlotte, North Carolina 28255.

Bank of America is one of the world's largest financial institutions, serving individual consumers, small- and middle-market businesses, large corporations and governments with a full range of banking, investing, asset management and other financial and risk management products and services. Through our banking subsidiaries (the Banks) and various nonbanking subsidiaries throughout the United States and in selected international markets, we provide a diversified range of banking and nonbanking financial services and products through six business segments: *Deposits*, *Global Card Services*, *Home Loans & Insurance*, *Global Banking*, *Global Markets*, *Global Wealth & Investment Management (GWIM)*, with the remaining operations recorded in *All Other*.

We are a global franchise, serving customers and clients around the world with operations in all 50 U.S. states, the District of Columbia and more than 40 foreign countries. As of December 31, 2009, the Bank of America retail banking footprint includes approximately 80 percent of the U.S. population, and in the United States, we serve approximately 59 million consumer and small business relationships with approximately 6,000 banking centers, more than 18,000 ATMs, nationwide call centers, and the leading online and mobile banking platforms. We have banking centers in 12 of the 15 fastest growing states and have leadership positions in eight of those states. We offer industry-leading support to approximately four million small business owners. We have the No. 1 U.S. retail deposits market share and are the No. 1 issuer of debit cards in the United States. We have the No. 2 market share in credit card products in the United States and we are the No. 1 credit card lender in Europe. We have approximately 8,900 mortgage loan officers and are the No. 1 mortgage servicer and No. 2 mortgage originator in the United States.

In addition, as of December 31, 2009, our commercial and corporate clients include 98 percent of the U.S. Fortune 1,000 and 82 percent of the Global Fortune 500 and we serve more than 11,000 issuer clients and 3,500 institutional investors. We are the No. 1 treasury services provider in the United States and a leading provider globally. With our acquisition of Merrill Lynch & Co., Inc. (Merrill Lynch) in 2009, we significantly enhanced our wealth management business and are a global leader in corporate and investment banking and trading across a broad range of asset classes serving corporations, governments, institutions and individuals around the world. We have one of the largest wealth management businesses in the world with approximately 15,000 financial advisors and more than \$2.1 trillion in net client assets, and we are a leading wealth manager for high-net-worth and ultra high net-worth clients. In addition, we have an economic ownership of approximately 34 percent in BlackRock, Inc., a publicly traded investment management company.

Additional information relating to our businesses and our subsidiaries is included in the information set forth in pages 27 through 42 of Item 7,

Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) and Note 23 – *Business Segment Information* to the Notes to the Consolidated Financial Statements in Item 8, Financial Statements and Supplementary Data (Consolidated Financial Statements).

Bank of America's website is [www.bankofamerica.com](http://www.bankofamerica.com). Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 are available on our website at <http://investor.bankofamerica.com> under the heading SEC Filings as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (SEC). In addition, we make available on <http://investor.bankofamerica.com> under the heading Corporate Governance: (i) our Code of Ethics (including our insider trading policy); (ii) our Corporate Governance Guidelines; and (iii) the charter of each committee of our Board of Directors (the Board) (by clicking on the committee names under the Committee Composition link), and we also intend to disclose any amendments to our Code of Ethics, or waivers of our Code of Ethics on behalf of our Chief Executive Officer, Chief Financial Officer or Chief Accounting Officer, on our website. All of these corporate governance materials are also available free of charge in print to stockholders who request them in writing to: Bank of America Corporation, Attention: Shareholder Relations Department, 101 South Tryon Street, NC1-002-29-01, Charlotte, North Carolina 28255.

#### Competition

We operate in a highly competitive environment. Our competitors include banks, thrifts, credit unions, investment banking firms, investment advisory firms, brokerage firms, investment companies, insurance companies, mortgage banking companies, credit card issuers, mutual fund companies and e-commerce and other internet-based companies in addition to those competitors discussed more specifically below. We compete with some of these competitors globally and with others on a regional or product basis. Competition is based on a number of factors including, among others, customer service, quality and range of products and services offered, price, reputation, interest rates on loans and deposits, lending limits and customer convenience. Our ability to continue to compete effectively also depends in large part on our ability to attract new employees and retain and motivate our existing employees, while managing compensation and other costs.

More specifically, our consumer banking business competes with banks, thrifts, credit unions, finance companies and other nonbank organizations offering financial services. Our commercial and large corporate lending businesses compete with local, regional and international banks and nonbank financial organizations. In the investment banking, wealth management, investment advisory and brokerage businesses, our nonbanking subsidiaries compete with U.S. and international commercial banking and investment banking firms, investment advisory firms, brokerage firms, investment companies, mutual funds, hedge funds, private equity funds, trust banks, multi-family offices, advice boutiques and other organizations offering similar services and other investment alternatives available to investors. Our mortgage banking business competes with

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banks, thrifts, mortgage brokers and other nonbank organizations offering mortgage banking and mortgage related services. Our card business competes in the United States and internationally with banks, consumer finance companies and retail stores with private label credit and debit cards.

We also compete actively for funds. A primary source of funds for the Banks is deposits, and competition for deposits includes other deposit-taking organizations, such as banks, thrifts and credit unions, as well as money market mutual funds. Investment banks and other entities that became bank holding companies and financial holding companies as a result of the recent financial crisis are also competitors for deposits. In addition, we compete for funding in the domestic and international short-term and long-term debt securities capital markets.

Over time, certain sectors of the financial services industry have become more concentrated, as institutions involved in a broad range of financial services have been acquired by or merged into other firms or have declared bankruptcy. This trend continued in 2008 and 2009 as the financial crisis caused additional mergers and asset acquisitions among industry participants. This trend toward consolidation has significantly increased the capital base and geographic reach of some of our competitors. This trend has also hastened the globalization of the securities markets. These developments could result in our remaining competitors gaining greater capital and other resources or having stronger local presences and longer operating histories outside the United States.

Our ability to expand certain of our banking operations in additional U.S. states remains subject to various federal and state laws. See "Government Supervision and Regulation – General" below for a more detailed discussion of interstate banking and branching legislation and certain state legislation.

### **Employees**

As of December 31, 2009, there were approximately 284,000 full-time equivalent employees with Bank of America. Of these employees, 75,800 were employed within *Deposits*, 24,900 were employed within *Global Card Services*, 52,800 were employed within *Home Loans & Insurance*, 22,900 were employed within *Global Banking*, 17,600 were employed within *Global Markets* and 40,400 were employed within *GWIM*. The remainder were employed elsewhere within our company including various staff and support functions.

None of our domestic employees is subject to a collective bargaining agreement. Management considers our employee relations to be good.

### **Acquisition and Disposition Activity**

As part of our operations, we regularly evaluate the potential acquisition of, and hold discussions with, various financial institutions and other businesses of a type eligible for financial holding company ownership or control. In addition, we regularly analyze the values of, and submit bids for, the acquisition of customer-based funds and other liabilities and assets of such financial institutions and other businesses. We also regularly consider the potential disposition of certain of our assets, branches, subsidiaries or lines of businesses. As a general rule, we publicly announce any material acquisitions or dispositions when a definitive agreement has been reached.

On January 1, 2009, we completed the acquisition of Merrill Lynch. Additional information on our acquisitions and mergers is included in *Note 2 – Merger and Restructuring Activity* to the Consolidated Financial Statements which is incorporated herein by reference.

### **Government Supervision and Regulation**

The following discussion describes, among other things, elements of an extensive regulatory framework applicable to bank holding companies, financial holding companies and banks and specific information about Bank of America. U.S. federal regulation of banks, bank holding companies and financial holding companies is intended primarily for the protection of depositors and the Deposit Insurance Fund (DIF) rather than for the protection of stockholders and creditors. For additional information about recent regulatory programs, initiatives and legislation that impact us, see "Regulatory Initiatives" in the MD&A.

#### **General**

As a registered bank holding company and financial holding company, Bank of America Corporation is subject to the supervision of, and regular inspection by, the Board of Governors of the Federal Reserve System (Federal Reserve Board). The Banks are organized as national banking associations, which are subject to regulation, supervision and examination by the Office of the Comptroller of the Currency (Comptroller or OCC), the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board and other federal and state regulatory agencies. In addition to banking laws, regulations and regulatory agencies, we are subject to various other laws and regulations and supervision and examination by other regulatory agencies, all of which directly or indirectly affect our operations and management and our ability to make distributions to stockholders. For example, our U.S. broker dealer subsidiaries are subject to regulation by and supervision of the SEC, the New York Stock Exchange and the Financial Industry Regulatory Authority (FINRA); our commodities businesses in the United States are subject to regulation by and supervision of the Commodities Futures Trading Commission (CFTC); and our insurance activities are subject to licensing and regulation by state insurance regulatory agencies.

Our non-U.S. businesses are also subject to extensive regulation by various non-U.S. regulators, including governments, securities exchanges, central banks and other regulatory bodies, in the jurisdictions in which the businesses operate. Our financial services operations in the United Kingdom are subject to regulation by and supervision of the Financial Services Authority (FSA).

A U.S. financial holding company, and the companies under its control, are permitted to engage in activities considered "financial in nature" as defined by the Gramm-Leach-Bliley Act and Federal Reserve Board interpretations (including, without limitation, insurance and securities activities), and therefore may engage in a broader range of activities than permitted for bank holding companies and their subsidiaries. Unless otherwise limited by the Federal Reserve Board, a financial holding company may engage directly or indirectly in activities considered financial in nature, either de novo or by acquisition, provided the financial holding company gives the Federal Reserve Board after-the-fact notice of the new activities. In addition, if the Federal Reserve Board finds that any of the Banks is not well capitalized or well managed, we would be required to enter into an agreement with the Federal Reserve Board to comply with all applicable capital and management requirements and which may contain additional limitations or conditions relating to our activities. The Gramm-Leach-Bliley Act also permits national banks, such as the Banks, to engage in activities considered financial in nature through a financial subsidiary, subject to certain conditions and limitations and with the approval of the OCC.

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U.S. bank holding companies (including bank holding companies that also are financial holding companies) also are required to obtain the prior approval of the Federal Reserve Board before acquiring more than five percent of any class of voting stock of any non-affiliated bank. Pursuant to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Banking and Branching Act), a bank holding company may acquire banks located in states other than its home state without regard to the permissibility of such acquisitions under state law, but subject to any state requirement that the bank has been organized and operating for a minimum period of time, not to exceed five years, and the requirement that the bank holding company, after the proposed acquisition, controls no more than 10 percent of the total amount of deposits of insured depository institutions in the United States and no more than 30 percent or such lesser or greater amount set by state law of such deposits in that state. At December 31, 2009, we controlled approximately 12 percent of the total amount of deposits of insured institutions in the United States. Subject to certain restrictions, the Interstate Banking and Branching Act also authorizes banks to merge across state lines to create interstate banks. The Interstate Banking and Branching Act also permits a bank to open new branches in a state in which it does not already have banking operations if such state enacts a law permitting de novo branching.

### Changes in Regulations

Proposals to change the laws and regulations governing the banking and financial services industries are frequently introduced in Congress, in the state legislatures and before the various bank regulatory agencies as well as by lawmakers and regulators in jurisdictions outside the United States where we operate. For example, in 2009, the U.S. Department of the Treasury (U.S. Treasury), the FDIC and the Federal Reserve Board developed programs and facilities designed to support the banking and financial services industries during the financial crisis. Congress and the U.S. government have continued to evaluate and develop legislation, programs and initiatives designed to, among other things, stabilize the financial and housing markets, stimulate the economy, including the U.S. government's foreclosure prevention program, and prevent future financial crises by further regulating the financial services industry. As a result of the financial crisis and challenging economic environment, we expect additional changes to be proposed and continued legislative and regulatory scrutiny of the financial services industry. The final form of any proposed programs or initiatives or related legislation, the likelihood and timing of any other future proposals or legislation, and the impact they might have on us cannot be determined at this time. For additional information regarding proposed regulatory and legislative initiatives, see "Executive Summary – Regulatory Overview" in the MD&A.

### Capital and Operational Requirements

The Federal Reserve Board, the OCC and the FDIC have issued substantially similar risk-based and leverage capital guidelines applicable to U.S. banking organizations. In addition, these regulatory agencies may from time to time require that a banking organization maintain capital above the minimum levels, whether because of its financial condition or actual or anticipated growth. The Federal Reserve Board risk-based guidelines define a three-tier capital framework. Tier 1 capital includes common shareholders' equity, trust preferred securities, noncontrolling interests, qualifying preferred stock and any Common Equivalent Securities (CES), less goodwill and other adjustments. Tier 2 capital consists of preferred stock not qualifying as Tier 1 capital, mandatorily convertible debt, limited amounts of subordinated debt, other qualifying term debt, the allowance for credit losses up to 1.25 percent of risk-weighted assets and other adjustments. Tier 3 capital includes subordinated debt that is

unsecured, fully paid, has an original maturity of at least two years, is not redeemable before maturity without prior approval by the Federal Reserve Board and includes a lock-in clause precluding payment of either interest or principal if the payment would cause the issuing bank's risk-based capital ratio to fall or remain below the required minimum. The sum of Tier 1 and Tier 2 capital less investments in unconsolidated subsidiaries represents our qualifying total capital. Risk-based capital ratios are calculated by dividing Tier 1 and total capital by risk-weighted assets. Assets and off-balance sheet exposures are assigned to one of four categories of risk-weights, based primarily on relative credit risk. The minimum Tier 1 capital ratio is four percent and the minimum total capital ratio is eight percent. Our Tier 1 and total risk-based capital ratios under these guidelines at December 31, 2009 were 10.40 percent and 14.66 percent. At December 31, 2009, we had no subordinated debt that qualified as Tier 3 capital. While not an explicit requirement of law or regulation, bank regulatory agencies have stated that they expect common capital to be the primary component of a financial holding company's Tier 1 capital and that financial holding companies should maintain a Tier 1 common capital ratio of at least 4%. The Tier 1 common capital ratio is determined by dividing Tier 1 common capital by risk weighted assets. We calculate Tier 1 common capital as Tier 1 capital, which includes CES, less preferred stock, trust preferred securities, hybrid securities and noncontrolling interest. As of December 31, 2009, our Tier 1 common capital ratio was 7.81 percent.

The leverage ratio is determined by dividing Tier 1 capital by adjusted quarterly average total assets, after certain adjustments. Well-capitalized bank holding companies must have a minimum Tier 1 leverage ratio of three percent and not be subject to a Federal Reserve Board directive to maintain higher capital levels. Our leverage ratio at December 31, 2009 was 6.91 percent, which exceeded our leverage ratio requirement.

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), among other things, identifies five capital categories for insured depository institutions (well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized) and requires the respective federal regulatory agencies to implement systems for "prompt corrective action" for insured depository institutions that do not meet minimum capital requirements within such categories. FDICIA imposes progressively more restrictive constraints on operations, management and capital distributions, depending on the category in which an institution is classified. Failure to meet the capital guidelines could also subject a banking institution to capital-raising requirements. An "undercapitalized" bank must develop a capital restoration plan and its parent holding company must guarantee that bank's compliance with the plan. The liability of the parent holding company under any such guarantee is limited to the lesser of five percent of the bank's assets at the time it became "undercapitalized" or the amount needed to comply with the plan. Furthermore, in the event of the bankruptcy of the parent holding company, such guarantee would take priority over the parent's general unsecured creditors. In addition, FDICIA requires the various regulatory agencies to prescribe certain non-capital standards for safety and soundness relating generally to operations and management, asset quality and executive compensation, and permits regulatory action against a financial institution that does not meet such standards.

The various regulatory agencies have adopted substantially similar regulations that define the five capital categories identified by FDICIA, using the total risk-based capital, Tier 1 risk-based capital and leverage capital ratios as the relevant capital measures. Such regulations establish various degrees of corrective action to be taken when an institution is considered undercapitalized. Under the regulations, a "well capitalized" institution must have a Tier 1 risk-based capital ratio of at least six percent, a total risk-based capital ratio of at least ten percent and a leverage

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ratio of at least five percent and not be subject to a capital directive order. Under these guidelines, each of the Banks was considered well capitalized as of December 31, 2009.

Regulators also must take into consideration: (a) concentrations of credit risk; (b) interest rate risk; and (c) risks from non-traditional activities, as well as an institution's ability to manage those risks, when determining the adequacy of an institution's capital. This evaluation is made as a part of the institution's regular safety and soundness examination. In addition, Bank of America Corporation, and any Bank with significant trading activity, must incorporate a measure for market risk in their regulatory capital calculations.

In addition, in June 2004, the Basel Committee on Banking Supervision published Basel II, which is designed to address credit risk, market risk and operational risk in the international banking markets. In December 2007, U.S. banking regulators published Basel II final rules which require us and certain of our U.S. Banks to implement Basel II. In December 2009, the Basel Committee on Banking Supervision released consultative documents on both capital and liquidity. Additionally, U.S. banking regulators continue to refine market risk requirements, which also have a regulatory capital impact. Revised requirements have not been issued but are expected in 2010. For additional information regarding these regulatory initiatives and proposals, see "Executive Summary – Regulatory Overview" in the MD&A and *Note 16 – Regulatory Requirements and Restrictions* to the Consolidated Financial Statements.

### Distributions

Our funds for cash distributions to our stockholders are derived from a variety of sources, including cash and temporary investments. The primary source of such funds, and funds used to pay principal and interest on our indebtedness, is dividends received from the Banks. Each of the Banks is subject to various regulatory policies and requirements relating to the payment of dividends, including requirements to maintain capital above regulatory minimums. The appropriate federal regulatory authority is authorized to determine under certain circumstances relating to the financial condition of a bank or bank holding company that the payment of dividends would be an unsafe or unsound practice and to prohibit payment thereof.

In addition, the ability of Bank of America Corporation and the Banks to pay dividends may be affected by the various minimum capital requirements and the capital and non-capital standards established under FDICIA, as described above. The right of Bank of America Corporation, our stockholders and our creditors to participate in any distribution of the assets or earnings of our subsidiaries is further subject to the prior claims of creditors of the respective subsidiaries.

For additional information regarding the requirements relating to the payment of dividends, including the minimum capital requirements, see *Note 15 – Shareholders' Equity and Earnings Per Common Share* and *Note 16 – Regulatory Requirements and Restrictions* to the Consolidated Financial Statements.

### Source of Strength

According to Federal Reserve Board policy, bank holding companies are expected to act as a source of financial strength to each subsidiary bank and to commit resources to support each such subsidiary. This support may be required at times when a bank holding company may not be able to provide such support. Similarly, under the cross-guarantee provisions of the Federal Deposit Insurance Act, in the event of a loss suffered or anticipated by the FDIC—either as a result of default of a banking subsidiary or related to FDIC assistance provided to a subsidiary in danger of default—the other Banks may be assessed for the FDIC's loss, subject to certain exceptions.

### Deposit Insurance

Deposits placed at the U.S. Banks are insured by the FDIC subject to limits and conditions of applicable law and the FDIC's regulations. In 2009, FDIC insurance coverage limits were temporarily increased from \$100,000 to \$250,000 per customer until December 31, 2013. The FDIC administers the DIF, and all insured depository institutions are required to pay assessments to the FDIC that fund the DIF. Assessments are required if the ratio of the DIF to insured deposits in the United States falls below 1.15%. As a result of the ongoing instability in the economy and the failure of other U.S. depository institutions, the DIF ratio currently is below the required level and the FDIC has adopted a restoration plan that will result in substantially higher deposit insurance assessments for all depository institutions over the coming years. On December 30, 2009, the FDIC required all depository institutions to prepay deposit insurance assessments for the next three years in order to provide liquidity to the DIF. Deposit insurance assessment rates are subject to change by the FDIC and will be impacted by the overall economy and the stability of the banking industry as a whole.

### Transactions with Affiliates

The U.S. Banks are subject to restrictions under federal law that limit certain types of transactions between the Banks and their non-bank affiliates. In general, the U.S. Banks are subject to quantitative and qualitative limits on extensions of credit, purchases of assets and certain other transactions involving Bank of America and its non-bank affiliates. Transactions between the U.S. Banks and their nonbank affiliates are required to be on arms length terms.

### Privacy and Information Security

We are subject to many U.S., state and international laws and regulations governing requirements for maintaining policies and procedures to protect the non-public confidential information of our customers. The Gramm-Leach-Bliley Act requires the Banks to periodically disclose Bank of America's privacy policies and practices relating to sharing such information and enables retail customers to opt out of our ability to market to affiliates and non-affiliates under certain circumstances.

### Additional Information

See also the following additional information which is incorporated herein by reference: Net Interest Income (under the captions "Financial Highlights – Net Interest Income" and "Supplemental Financial Data" in the MD&A and Tables I, II and XIII of the Statistical Tables); Securities (under the caption "Balance Sheet Analysis – Debt Securities" and "Market Risk Management – Interest Rate Risk Management for Nontrading Activities – Securities" in the MD&A and *Note 1 – Summary of Significant Accounting Principles* and *Note 5 – Securities* to the Consolidated Financial Statements); Outstanding Loans and Leases (under the caption "Balance Sheet Analysis – Loans and Leases" and "Credit Risk Management" in the MD&A, Table IV of the Statistical Tables, and *Note 1 – Summary of Significant Accounting Principles* and *Note 6 – Outstanding Loans and Leases* to the Consolidated Financial Statements); Deposits (under the caption "Balance Sheet Analysis – Deposits" and "Liquidity Risk and Capital Management – Funding and Liquidity Risk Management" in the MD&A and *Note 11 – Deposits* to the Consolidated Financial Statements); Short-term Borrowings (under the caption "Balance Sheet Analysis – Commercial Paper and Other Short-term Borrowings" and "Liquidity Risk and Capital Management – Funding and Liquidity Risk Management" in the MD&A, Table IX of the Statistical Tables and *Note 12 – Short-term Borrowings* and *Note 13 – Long-term Debt* to the Consolidated Financial Statements); Trading Account Assets and Liabilities (under the caption "Balance Sheet



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Analysis – Federal Funds Sold and Securities Borrowed or Purchased Under Agreements to Resell”, “Balance Sheet Analysis – Federal Funds Purchased and Securities Loaned or Sold Under Agreements to Repurchase” and “Market Risk Management – Trading Risk Management” in the MD&A and *Note 3 – Trading Account Assets and Liabilities* to the Consolidated Financial Statements); Market Risk Management (under the caption “Market Risk Management” in the MD&A); Liquidity Risk Management (under the caption “Liquidity Risk and Capital Management” in the MD&A); Compliance Risk Management (under the Caption “Compliance Risk Management” in the MD&A) and Operational Risk Management (under the caption “Operational Risk Management” in the MD&A); and Performance by Geographic Area (under *Note 25 – Performance by Geographical Area* to the Consolidated Financial Statements).

### Item 1A. Risk Factors

In the course of conducting our business operations, we are exposed to a variety of risks that are inherent to the financial services industry. The following discusses some of the key inherent risk factors that could affect our business and operations, as well as other risk factors which are particularly relevant to us in the current period of significant economic and market disruption. Other factors besides those discussed below or elsewhere in this report could also adversely affect our business and operations, and these risk factors should not be considered a complete list of potential risks that may affect us.

**Our businesses and earnings have been, and may continue to be, negatively affected by adverse business and economic conditions.** Our businesses and earnings are affected by general business and economic conditions in the United States and abroad. Given the concentration of our business activities in the United States, we are particularly exposed to downturns in the U.S. economy. For example, as a result of the challenging economic environment there continues to be a greater likelihood that an elevated number of our customers or counterparties will become delinquent on their loans or other obligations to us, which, in turn, may continue to result in a high level of charge-offs and provision for credit losses, all of which would adversely affect our earnings and capital levels.

General business and economic conditions that could affect us include the level and volatility of short-term and long-term interest rates, inflation, home prices, unemployment and under-employment levels, bankruptcies, household income, consumer spending, fluctuations in both debt and equity capital markets, liquidity of the global financial markets, the availability and cost of credit, investor confidence, and the strength of the U.S. economy and the other economies in which we operate. The deterioration of any of these conditions can adversely affect our consumer and commercial businesses and securities portfolios, as well as our earnings.

In 2009, weak economic conditions in the United States and abroad continued to adversely affect many of our businesses as well as our earnings. Dramatic declines in the housing market, with falling home prices and increasing foreclosures, and rising unemployment and underemployment, have further negatively impacted the demand for many of our products and the credit performance of our consumer and commercial portfolios. In addition, these conditions resulted in significant write-downs of asset values in several asset classes, notably mortgage-backed securities, commercial real estate and leveraged loans and exposure to monoline insurers. While there are early indications that the U.S. economy is stabilizing, the performance of our overall consumer and commercial portfolios may not significantly improve in the near future. A protracted continuation or worsening of these difficult business or economic conditions would likely exacerbate the adverse effects on us.

We have sold and continue to sell mortgage and other loans, including mortgage loans to third-party buyers and to the Federal National Mortgage

Association and Federal Home Loan Mortgage Corporation, under agreements that contain representations and warranties related to, among other things, the process for selecting the loans for inclusion in a sale and compliance with applicable criteria established by the buyer. We also have indirect exposure with respect to our mortgage and other loan sales as a result of credit protection provided by monoline financial guarantors. We have experienced and continue to experience increasing repurchase demands from and disputes with these buyers and monoline financial guarantors. In the event we are required to repurchase these mortgage and other loans or provide indemnification or other recourse, this could significantly increase our losses and thereby affect our future earnings.

Additional factors which could reduce our earnings include, among other things, lower residual net interest income as a result of a decision to deleverage our asset and liability management portfolio, higher than expected losses on our purchased impaired portfolio and compliance with governmental foreclosure prevention and loan modification initiatives.

We are a diversified financial services company providing consumer and commercial banking, credit card, mortgage, investment banking and capital markets trading services and investment services. Although we believe this diversity generally assists us in lessening the effect of a downturn in any of our businesses, it also means that our earnings could be adversely affected by the downturn to the extent not fully offset by any of our other businesses.

For a further discussion of the economic downturn and the resulting adverse impact on our credit performance, see “Executive Summary,” “Financial Highlights” and “Credit Risk Management” in the MD&A.

**Our increased credit risk could result in higher credit losses and reduced earnings.** When we loan money, commit to loan money or enter into a letter of credit or other contract with a counterparty, we incur credit risk, or the risk of losses if our borrowers do not repay their loans or our counterparties fail to perform according to the terms of their agreements. A number of our products expose us to credit risk, including loans, leases and lending commitments, derivatives, trading account assets and assets held-for-sale. As one of the nation’s largest lenders, the credit quality of our consumer and commercial portfolios has a significant impact on our earnings. Current negative economic conditions are likely to continue to increase our credit exposure to third parties who may be more likely to default on their obligations to us. This increased credit risk could adversely affect our consumer credit card, home equity, consumer real estate and purchased impaired portfolios, among others, including causing increases in delinquencies and default rates, which we expect will continue to impact our charge-offs and provision for credit losses. In addition, this could also adversely affect our commercial loan portfolios where we have experienced increased losses, particularly in our commercial real estate and commercial domestic portfolios, reflecting broad based deteriorations across industries, property types and borrowers.

We estimate and establish reserves for credit risks and credit losses inherent in our lending activities (including unfunded lending commitments), excluding those measured at fair value under the fair value option. This process, which is critical to our financial results and condition, requires difficult, subjective and complex judgments, including forecasts of economic conditions and how our borrowers will react to those conditions. Our ability to assess future economic conditions or the creditworthiness of our customers is imperfect. The ability of our borrowers to repay their loans will likely be impacted by changes in economic conditions, which in turn could impact the accuracy of our forecasts. As with any such assessments, there is also the chance that we will fail to identify the proper factors or that we will fail to accurately estimate the impacts of factors that we identify. In addition, we may underestimate the credit losses in our loan portfolios and suffer unexpected losses if the models and approaches we use to establish reserves and make judgments in extending credit to our bor - -

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rowers and other counterparties become less predictive of future behaviors, valuations, assumptions or estimates.

In the ordinary course of our business, we also may be subject to a concentration of credit risk to a particular industry, country, counterparty, borrower or issuer. A deterioration in the financial condition or prospects of a particular industry or a failure or downgrade of, or default by, any particular entity or group of entities could negatively impact our businesses, perhaps materially, and the systems by which we set limits and monitor the level of our credit exposure to individual entities, industries and countries may not function as we have anticipated. While our activities expose us to many different industries and counterparties, we routinely execute a high volume of transactions with counterparties in the financial services industry, including brokers and dealers, commercial banks, investment funds and insurers. This has resulted in significant credit concentration with respect to this industry.

We have concentration of credit risk with respect to our consumer real estate, consumer credit card and commercial real estate portfolios, which represent a large percentage of our overall credit portfolio. The current financial crisis and economic slowdown has adversely affected these portfolios and further exposed us to this concentration of risk. Continued economic weakness or deterioration in real estate values or household incomes could result in materially higher credit losses.

For a further discussion of credit risk and our credit risk management policies and procedures, see "Credit Risk Management" in the MD&A and *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

**Adverse changes in legislative and regulatory initiatives may significantly impact our earnings, operations, capital position and ability to pursue business opportunities.** We are heavily regulated by regulatory agencies at the federal, state and international levels. As a result of the recent financial crisis and economic downturn, we have faced and expect to continue to face increased regulation and regulatory and political scrutiny, which creates significant uncertainty for us and the financial services industry in general.

In 2009, several major regulatory and legislative initiatives were adopted that will have significant future impacts on our businesses and financial results. For instance, in November 2009, the Federal Reserve Board issued amendments to Regulation E, which implements the Electronic Fund Transfer Act. The new rules have a compliance date of July 1, 2010. These amendments change, among other things, the way we and other banks may charge overdraft fees by limiting our ability to charge an overdraft fee for automated teller machine and one-time debit card transactions that overdraw a consumer's account, unless the consumer affirmatively consents to payment of overdrafts for those transactions. In connection with the amendments, we announced a program that allowed customers to opt out of overdraft services prior to the effective date of the amendments. In addition, in May 2009, the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 was enacted that provides for comprehensive reform related to credit card industry practices, including (1) significantly restricting banks' ability to change interest rates and assess fees to reflect individual consumer risk, (2) changing the way payments are applied and (3) requiring changes to consumer credit card disclosures. As a result, as we announced in October 2009, we did not increase interest rates on consumer credit accounts in response to provisions in the CARD Act prior to its effective date, unless a customer's account fell past due or was based on a variable interest rate. The most significant provisions of the CARD Act took effect in February 2010. Complying with the Regulation E amendments and the CARD Act requires us to invest significant management attention and resources to make the necessary disclosure and systems changes and will likely adversely affect our earnings.

Federal banking regulatory agencies may from time to time require that we change our required capital levels, including maintaining capital above

minimum levels. In January 2010, U.S. banking regulators issued a final rule regarding risk-based capital that eliminates the exclusion of certain asset-backed commercial paper (ABCP) program assets from risk-weighted assets. As a result of the new rules, as with all other consolidated variable interest entities, a banking organization is required to include the assets of a consolidated ABCP program in risk-weighted assets. The new rules would also eliminate the associated provision in the general risk-based capital rules that excludes from Tier 1 capital the noncontrolling interest in a consolidated ABCP program not included in a banking organization's risk-weighted assets. Beginning with reporting for the quarter ended March 31, 2010, we will be required to risk-weight the underlying assets of ABCP conduits as well as the contractual exposures (e.g. liquidity facilities).

In conjunction with the federal banking regulatory agencies' Supervisory Capital Assessment Program (SCAP) conducted in May 2009, we were required to increase Tier 1 common capital by approximately \$33.9 billion. Additionally, in order to repay the \$45 billion investment in our preferred stock previously made under the Trouble Asset Relief Program (TARP) by the U.S. Treasury, in December 2009, we raised approximately \$19.3 billion in gross proceeds in an offering of CES and agreed to increase equity by \$3 billion through asset sales by June 30, 2010 and 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 normal year-end incentive payments. For a further discussion of the CES, see "Executive Summary—TARP Repayment" in the MD&A.

In July 2009, the Basel Committee on Banking Supervision released a consultative document that would significantly increase the capital requirements for trading book activities if adopted as proposed. The proposal recommended implementation by December 31, 2010, but regulatory agencies are currently evaluating the proposed rulemaking and related impacts before establishing final rules. As a result, we cannot determine the implementation date or the final capital impact.

In December 2009, the Basel Committee on Banking Supervision released consultative documents on both capital and liquidity. If adopted as proposed, this could increase significantly the aggregate equity that bank holding companies are required to hold, by disqualifying certain instruments that previously have qualified as Tier 1 capital. The proposal currently includes a leverage ratio and increased liquidity and disclosure requirements. The leverage ratio could prove more restrictive than a risk-based measure while the liquidity requirement could result in banks holding greater levels of lower yielding instruments as a percentage of their assets. The proposal could also increase the capital charges imposed on certain assets, potentially making certain businesses more expensive to conduct. U.S. regulatory agencies have not opined on these proposals for U.S. implementation. We continue to assess the potential impact of this proposal. If we are required to increase our regulatory capital as a result of these or other regulatory or legislative initiatives, we may be required among other things to issue additional shares of common stock, which could dilute our existing stockholders.

As a result of the financial crisis, the financial services industry is facing the possibility of legislative and regulatory changes that would impose significant, adverse changes on its ability to serve both retail and wholesale customers. A proposal is currently being considered to levy a tax or fee on financial institutions with assets in excess of \$50 billion to repay the costs of TARP, although the proposed tax would continue even after those costs are repaid. If enacted as proposed, the tax could significantly affect our earnings, either by increasing the costs of our liabilities or causing us to reduce our assets. It remains uncertain whether the tax will be enacted, to whom it would apply, or the amount of the tax we would be required to pay. It is also unclear the extent to which the costs of such a tax could be recouped through higher pricing.

In addition, various proposals for broad-based reform of the financial regulatory system are pending. A majority of these proposals would not

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disrupt our core businesses, but a proposal could ultimately be adopted that adversely affects certain of our businesses. The proposals would require divestment of certain proprietary trading activities, or limit private equity investments. Other proposals, which include limiting the scope of an institution's derivatives activities, or forcing certain derivatives activities to be traded on exchanges, would diminish the demand for, and profitability of, certain businesses. Several other proposals would require issuers to retain unhedged interests in any asset that is securitized, potentially severely restricting the secondary market as a source of funding for consumer or commercial lending. There are also numerous proposals pending on how to resolve a failed systemically important institution. Following the passage of a bill in the U.S. House of Representatives and the possibility of similar provisions in a U.S. Senate bill, one ratings agency has placed us and other banks on negative outlook, and therefore adoption of such provisions may adversely affect our access to credit markets.

In addition, other countries, including the United Kingdom and France, have proposed and in some cases adopted certain reforms targeted at financial institutions, including, but not limited to, increased capital and liquidity requirements for local entities, including regulated U.K. subsidiaries of foreign bank holding companies and other financial institutions as well as branches of foreign banks located in the United Kingdom, the creation and production of recovery and resolutions plans (commonly referred to as living wills) by such entities, and a significant payroll tax on bank bonuses paid to employees over a certain threshold.

There can be no assurance as to whether or when any of the parts of these or other proposals will be enacted, and if enacted, what the final initiatives will consist of and what the ultimate impact on us will be.

We also may be required to pay significantly higher FDIC premiums because market developments have significantly depleted the DIF and reduced the ratio of reserves to insured deposits, which could increase our noninterest expense and reduce our earnings.

For more information on these and other legislative and regulatory initiatives, see "Regulatory Initiatives" in the MD&A.

In addition, Congress is currently considering reinstating income tax provisions whereby a majority of the income of certain foreign subsidiaries would not be subject to current U.S. income tax as a result of long-standing deferral provisions applicable to active finance income. These provisions, which in the past have expired and been extended, expired again for taxable years beginning on or after January 1, 2010. Absent an extension of these provisions, active financing income earned by our foreign subsidiaries during 2010 will generally be subject to a tax provision that considers the incremental U.S. income tax. The impact of the expiration of the provisions should they not be extended could be significant. The exact impact would depend upon the amount, composition and geographic mix of our future earnings. For more information on these provisions, see "Financial Highlights—Income Tax Expense" in the MD&A.

Compliance with current or future legislative and regulatory initiatives could require us to change certain of our business practices, impose significant additional costs on us, limit the products that we offer, result in a significant loss of revenue, limit our ability to pursue business opportunities in an efficient manner, require us to increase our regulatory capital, cause business disruptions, impact the value of assets that we hold or otherwise adversely affect our business, results of operations or financial condition. We have recently witnessed the introduction of an ever-increasing number of regulatory proposals that could substantially impact us and others in the financial services industry. The extent of changes imposed by, and frequency of adoption of, any regulatory initiatives could make it more difficult for us to comply in a timely manner, which could further limit our operations, increase compliance costs or divert management attention or other resources. The long-term impact of legislative and

regulatory initiatives on our business practices and revenues will depend upon the successful implementation of our strategies, consumer behavior, and competitors' responses to such initiatives, all of which are difficult to predict.

**We could suffer losses as a result of the actions of or deterioration in the commercial soundness of other financial services institutions and counterparties, including as a result of derivatives transactions.** Our ability to engage in routine trading and funding transactions could be adversely affected by the actions and commercial soundness of other market participants. We have exposure to many different industries and counterparties, and we routinely execute transactions with counterparties in the financial services industry, including brokers and dealers, commercial banks, investment banks, mutual and hedge funds and other institutional clients. Financial services institutions and other counterparties are inter-related because of trading, funding, clearing or other relationships. As a result, defaults by, or even rumors or questions about, one or more financial services institutions, or the financial services industry generally, have led to market-wide liquidity problems and could lead to future losses or defaults by us or by other institutions. Many of these transactions expose us to credit risk in the event of default of a counterparty or client. In addition, our credit risk may be impacted when the collateral held by us cannot be realized upon or is liquidated at prices not sufficient to recover the full amount of the loan or derivatives exposure due us. There is no assurance that any such losses would not materially and adversely affect our results of operations.

We are party to a large number of derivatives transactions, including credit derivatives. Many of these derivative instruments are individually negotiated and non-standardized, which can make exiting, transferring or settling some positions difficult. Many credit derivatives require that we deliver to the counterparty the underlying security, loan or other obligation in order to receive payment. In a number of cases, we do not hold, and may not be able to obtain, the underlying security, loan or other obligation. This could cause us to forfeit the payments due to us under these contracts or result in settlement delays with the attendant credit and operational risk as well as increased costs to us.

Derivatives contracts and other transactions entered into with third parties are not always confirmed by the counterparties on a timely basis. While a transaction remains unconfirmed, we are subject to heightened credit and operational risk and in the event of default may find it more difficult to enforce the contract. In addition, as new and more complex derivatives products have been created, covering a wider array of underlying credit and other instruments, disputes about the terms of the underlying contracts may arise, which could impair our ability to effectively manage our risk exposures from these products and subject us to increased costs. For a further discussion of our derivatives exposure, see *Note 4 -- Derivatives* to the Consolidated Financial Statements.

**Changes in accounting standards or inaccurate estimates or assumptions in the application of accounting policies could adversely affect our financial results.** Our accounting policies and methods are fundamental to how we record and report our financial condition and results of operations. Some of these policies require use of estimates and assumptions that may affect the reported value of our assets or liabilities and financial results and are critical because they require management to make difficult, subjective and complex judgments about matters that are inherently uncertain.

Recently, the Financial Accounting Standards Board (FASB) and other regulators have adopted new guidance or rules relating to financial accounting or regulatory capital standards such as, among other things, the rules related to fair value accounting and new FASB guidance on consolidation of variable interest entities. In addition, accounting standard setters and those who interpret the accounting standards (such as the FASB, the SEC, banking regulators and our independent registered public accounting firm) may amend or even reverse their previous interpretations

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or positions on how these standards should be applied. These changes can be hard to predict and can materially impact how we record and report our financial condition and results of operations. In some cases, we could be required to apply a new or revised standard retroactively, resulting in the Corporation restating prior period financial statements. For a further discussion of some of our critical accounting policies and standards and recent accounting changes, see "Regulatory Initiatives" and "Complex Accounting Estimates" in the MD&A and *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

**Our ability to attract and retain customers and employees could be adversely affected to the extent our reputation is harmed.** Our ability to attract and retain customers and employees could be adversely affected to the extent our reputation is damaged. Our actual or perceived failure to address various issues could give rise to reputational risk that could cause harm to us and our business prospects, including failure to properly address operational risks. These issues also include, but are not limited to, legal and regulatory requirements; privacy; properly maintaining customer and associate personal information; record keeping; money-laundering; sales and trading practices; ethical issues; appropriately addressing potential conflicts of interest; and the proper identification of the legal, reputational, credit, liquidity and market risks inherent in our products.

We are also facing enhanced public and regulatory scrutiny resulting from the financial crisis, including the U.S. Treasury's previous investment in our preferred stock, our acquisition of Merrill Lynch, modification of mortgages, volume of lending, compensation practices and the suitability of certain trading and investment businesses. Failure to appropriately address any of these issues could also give rise to additional regulatory restrictions, reputational harm and legal risks, which could among other consequences increase the size and number of litigation claims and damages asserted or subject us to enforcement actions, fines and penalties and cause us to incur related costs and expenses.

**We face substantial potential legal liability and significant regulatory action, which could have materially adverse financial consequences or cause significant reputational harm to us.** We face significant legal risks in our businesses, and the volume of claims and amount of damages and penalties claimed in litigation and regulatory proceedings against us and other financial institutions remain high and are increasing. Increased litigation costs, substantial legal liability or significant regulatory action against us could have material adverse financial effects or cause significant reputational harm to us, which in turn could seriously impact our business prospects. In addition, we face increased litigation risk and regulatory scrutiny as a result of the Merrill Lynch and Countrywide acquisitions. As a result of current economic conditions and the increased level of defaults over the prior couple of years, we have continued to experience increased litigation and other disputes with counterparties regarding relative rights and responsibilities. These litigation and regulatory matters and any related settlements could adversely impact our earnings and lead to volatility of our stock price. For a further discussion of litigation risks, see *Note 14 – Commitments and Contingencies* to the Consolidated Financial Statements.

**Our liquidity could be impaired by our inability to access the capital markets on favorable terms.** Liquidity is essential to our businesses. Under normal business conditions, primary sources of funding for Bank of America Corporation include dividends received from banking and nonbanking subsidiaries and proceeds from the issuance of securities in the capital markets. The primary sources of funding for our banking subsidiaries include customer deposits and wholesale market-based funding. Our liquidity could be impaired by an inability to access the capital markets or by unforeseen outflows of cash, including deposits. This situation may arise due to circumstances that we may be unable to control, such as a general market disruption, negative views about the financial services industry generally, or an operational problem that affects third parties or us. Our

ability to raise certain types of funds as a result of the recent financial crisis has been and could continue to be adversely affected by conditions in the United States and international markets and economies. In 2009, global capital and credit markets continued to experience volatility and disruptions. As a result, we utilized several temporary U.S. government liquidity programs to enhance our liquidity position. Our ability to engage in securitization funding transactions on favorable terms could be adversely affected by continued or subsequent disruptions in the capital markets or other events, including actions by ratings agencies or deteriorating investor expectations.

Our credit ratings and the credit ratings of our securitization trusts are important to our liquidity. The ratings agencies regularly evaluate us and our securities, and their ratings of our long-term and short-term debt and other securities, including asset securitizations, are based on a number of factors, including our financial strength as well as factors not entirely within our control, including conditions affecting the financial services industry generally. During 2009, the ratings agencies took numerous actions to adjust our credit ratings and outlooks, many of which were negative. The ratings agencies have indicated that our credit ratings currently reflect their expectation that, if necessary, we would receive significant support from the U.S. government. In February 2010, Standard & Poor's affirmed our current credit ratings but revised the outlook to negative from stable, based on their belief that it is less certain whether the U.S. government would be willing to provide extraordinary support. In light of the difficulties in the financial services industry and the financial markets, there can be no assurance that we will maintain our current ratings. Failure to maintain those ratings could adversely affect our liquidity and competitive position by materially increasing our borrowing costs and significantly limiting our access to the funding or capital markets, including securitizations. A reduction in our credit ratings also could have a significant impact on certain trading revenues, particularly in those businesses where counterparty credit worthiness is critical. In connection with certain trading agreements, we may be required to provide additional collateral in the event of a credit ratings downgrade.

For a further discussion of our liquidity position and other liquidity matters, including ratings and outlooks and the policies and procedures we use to manage our liquidity risks, see "Liquidity Risk and Capital Management" in the MD&A.

**Changes in financial or capital market conditions could cause our earnings and the value of our assets to decline.** Market risk generally represents the risk that values of assets and liabilities or revenues will be adversely affected by changes in market conditions. As a result, we are directly and indirectly affected by changes in market conditions. For example, we rely on bank deposits for a low cost and stable source of funding for the loans that we make. However, changes in interest rates on bank deposits could adversely affect our net interest margin – the difference between the yield we earn on our assets and the interest rate we pay for deposits and other sources of funding – which could in turn affect our net interest income and earnings.

Market risk is inherent in the financial instruments associated with our operations and activities, including loans, deposits, securities, short-term borrowings, long-term debt, trading account assets and liabilities and derivatives. Just a few of the market conditions that may change from time to time, thereby exposing us to market risk, include changes in interest and currency exchange rates, equity and futures prices, the implied volatility of interest rates, credit spreads and price deterioration or changes in value due to changes in market perception or actual credit quality of either the issuer or its country of origin. Accordingly, depending on the instruments or activities impacted, market risks can have wide ranging, complex adverse effects on our results of operations and our overall financial condition. We also may incur significant unrealized gains or losses as a result of changes in our credit spreads or those of third parties, which may affect the fair value of our derivatives instruments and debt securities that we hold or issue.

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Our models and strategies we use to assess and control our risk exposures are subject to inherent limitations. For example, our models, which rely on historical trends and assumptions, may not be sufficiently predictive of future results due to limited historical patterns, extreme or unanticipated market movements and illiquidity, especially during severe market downturns or stress events. The models that we use to assess and control our risk exposures also reflect assumptions about the degree of correlation or lack thereof among prices of various asset classes or other market indicators. In times of market stress or other unforeseen circumstances, such as the market conditions experienced in 2008 and 2009, previously uncorrelated indicators may become correlated, or previously correlated indicators may move in different directions. These types of market movements have at times limited the effectiveness of our hedging strategies and have caused us to incur significant losses, and they may do so in the future. These changes in correlation can be exacerbated where other market participants are using risk or trading models with assumptions or algorithms that are similar to ours. In these and other cases, it may be difficult to reduce our risk positions due to the activity of other market participants or widespread market dislocations, including circumstances where asset values are declining significantly or no market exists for certain assets. To the extent that we make investments directly in securities that do not have an established liquid trading market or are otherwise subject to restrictions on sale or hedging, we may not be able to reduce our positions and therefore reduce our risk associated with such positions.

For a further discussion of market risk and our market risk management policies and procedures, see "Market Risk Management" in the MD&A.

**Adverse changes in the value of certain of our assets and liabilities could adversely impact our earnings.** We have a large portfolio of financial instruments that we measure at fair value, including among others certain corporate loans and loan commitments, loans held-for-sale, structured reverse repurchase agreements and long-term deposits. We also have trading account assets and liabilities, derivatives assets and liabilities, available-for-sale debt and marketable equity securities, consumer-related mortgage servicing rights (MSRs) and certain other assets that are valued at fair value. We determine the fair values of these instruments based on the fair value hierarchy under applicable accounting guidance. The fair values of these financial instruments include adjustments for market liquidity, credit quality and other deal specific factors, where appropriate.

Gains or losses on these instruments can have a direct and significant impact on our earnings, unless we have effectively "hedged" our exposures. For example, changes in interest rates, among other things, can impact the value of our MSRs and can result in substantially higher or lower mortgage banking income and earnings, depending upon our ability to fully hedge the performance of our MSRs. Fair values may be impacted by declining values of the underlying assets or the prices at which observable market transactions occur and the continued availability of these transactions. The financial strength of counterparties, such as monoline financial guarantors, with whom we have economically hedged some of our exposure to these assets, also will affect the fair value of these assets. Sudden declines and significant volatility in the prices of assets may substantially curtail or eliminate the trading activity for these assets, which may make it very difficult to sell, hedge or value such assets. The inability to sell or effectively hedge assets reduces our ability to limit losses in such positions and the difficulty in valuing assets may increase our risk-weighted assets which requires us to maintain additional capital and increases our funding costs.

As previously disclosed on a current report on Form 8-K, in connection with the \$2.8 billion in cash-settled restricted stock units awarded to some associates as part of their year-end compensation, we may recognize additional expense as a result of changes in the price of our common stock during the vesting period to the extent we do not effectively hedge this exposure. The awards of cash-settled restricted stock units are stock-based compensation paid out over time based on the price of

our common stock. Although we currently plan to make those payments in cash, we have reserved the right to make some or all of the payments in shares of our common stock.

Asset values also directly impact revenues in our asset management business. We receive asset-based management fees based on the value of our clients' portfolios or investments in funds managed by us and, in some cases, we also receive incentive fees based on increases in the value of such investments. Declines in asset values can reduce the value of our clients' portfolios or fund assets, which in turn can result in lower fees earned for managing such assets.

**Our ability to successfully identify and manage our compliance and other risks is an important factor that can significantly impact our results.** We seek to monitor and control our various risk exposures through a variety of separate but complementary financial, credit, operational, compliance and legal reporting systems. While we employ a broad and diversified set of risk monitoring and risk mitigation techniques, those techniques and the judgments that accompany their application cannot anticipate every economic, financial or regulatory outcome or the specifics or timing of such outcomes. Accordingly, our ability to successfully identify and manage risks facing us is an important factor that can significantly impact our results. Recent economic conditions, increased legislative and regulatory scrutiny and increased complexity of our operations, among other things, have increased and made it more difficult for us to manage our operational, compliance and other risks. For a further discussion of our risk management policies and procedures, see "Managing Risk" in the MD&A.

**We may be unable to compete successfully as a result of the evolving financial services industry and market conditions.** We operate in a highly competitive environment. Over time, there has been substantial consolidation among companies in the financial services industry, and this trend accelerated in 2008 and 2009 as the credit crisis led to numerous mergers and asset acquisitions among industry participants and in certain cases reorganization, restructuring, or even bankruptcy. This trend has also hastened the globalization of the securities and financial services markets. We will continue to experience intensified competition as further consolidation in the financial services industry in connection with current market conditions may produce larger and better-capitalized companies that are capable of offering a wider array of financial products and services at more competitive prices. To the extent we expand into new business areas and new geographic regions, we may face competitors with more experience and more established relationships with clients, regulators and industry participants in the relevant market, which could adversely affect our ability to compete. In addition, technological advances and the growth of e-commerce have made it possible for non-depository institutions to offer products and services that traditionally were banking products, and for financial institutions to compete with technology companies in providing electronic and internet-based financial solutions. Increased competition may affect our results by creating pressure to lower prices on our products and services and reducing market share.

Our continued ability to compete effectively in our businesses, including management of our existing businesses and expansion into new businesses and geographic areas, depends in part on our ability to retain and motivate our existing employees and attract new employees. We face significant competition for qualified employees both within and outside the financial services industry, including foreign-based institutions and institutions not subject to compensation or hiring restrictions imposed under any U. S. government initiatives or not subject to the same regulatory scrutiny. This is particularly the case in emerging markets, where we are often competing for qualified employees with entities that may have a significantly greater presence or more extensive experience in the region. A substantial portion of our annual bonus compensation paid to our senior employees has in recent years been paid in the form of long-term awards. The value of long-term equity awards to senior employees generally

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has been impacted by the significant decline in the market price of our common stock. We also reduced the number of employees across nearly all of our businesses in 2008 and 2009. In addition, the consolidation in the financial services industry has intensified the inherent challenges of cultural integration between differing types of financial services institutions. The combination of these events could have a significant adverse impact on our ability to retain and hire the most qualified employees.

**Our inability to successfully integrate, or realize the expected benefits from, our recent acquisitions could adversely affect our results.** There are significant risks and uncertainties associated with mergers. We have made several significant acquisitions in the last several years, including our acquisition of Merrill Lynch, and there is a risk that integration difficulties or a significant decline in asset valuations or cash flows may cause us not to realize expected benefits from the transactions and may affect our results, including adversely impacting the carrying value of the acquisition premium or goodwill. In particular, the success of the Merrill Lynch acquisition will depend, in part, on our ability to realize the anticipated benefits and cost savings from combining the businesses of Bank of America and Merrill Lynch. To realize these anticipated benefits and cost savings, we must continue to successfully integrate our businesses, systems and operations. If we are not able to achieve these objectives, the anticipated benefits and cost savings of the acquisition may not be realized fully or may take longer to realize than expected. For example, we may fail to realize the growth opportunities and cost savings anticipated to be derived from the acquisition. Our ability to achieve these objectives has also been made more difficult as a result of the substantial challenges that we are facing in our businesses because of the current economic environment.

In addition, it is possible that the integration process could result in disruption of our and Merrill Lynch's ongoing businesses or inconsistencies in standards, controls, procedures and policies that adversely affect our ability to maintain sufficiently strong relationships with clients, customers, depositors and employees or to achieve the anticipated benefits of the acquisition. Integration efforts may also divert management attention and resources. These integration matters could have an adverse effect on us for an undetermined period. We will be subject to similar risks and difficulties in connection with any future acquisitions or decisions to downsize, sell or close units or otherwise change the business mix of the Corporation.

**We may be adversely impacted by business, economic and political conditions in the non-U.S. jurisdictions in which we operate.** We do business throughout the world, including in developing regions of the world commonly known as emerging markets. Our acquisition of Merrill Lynch has significantly increased our exposure to a number of risks in non-U.S. jurisdictions, including economic, market, reputational, operational, litigation and regulatory risks. Our businesses and revenues derived from non-U.S. jurisdictions are subject to risk of loss from currency fluctuations, social or judicial instability, changes in governmental policies or policies of central banks, expropriation, nationalization and/or confiscation of assets, unfavorable political and diplomatic developments and changes in legislation. Also, as in the United States, many non-U.S. jurisdictions in which we do business have been negatively impacted by recessionary conditions. While a number of these jurisdictions are showing signs of recovery, others continue to experience increasing levels of stress. In addition, the risk of default on sovereign debt in some non-U.S. jurisdictions is increasing and could expose us to losses.

In many countries, the laws and regulations applicable to the securities and financial services industries are uncertain and evolving, and it may be difficult for us to determine the exact requirements of local laws in every market or manage our relationships with multiple regulators in various jurisdictions. Our inability to remain in compliance with local laws in a particular market and manage our relationships with regulators could have a significant and negative effect not only on our business in that market but also on our reputation generally.

In addition, our revenues from emerging markets are particularly exposed to severe political, economic and financial disruptions, including significant currency devaluations, currency exchange controls and low or negative economic growth rates.

We also invest or trade in the securities of corporations and governments located in non-U.S. jurisdictions, including emerging markets. Revenues from the trading of non-U.S. securities may be subject to negative fluctuations as a result of the above factors. Furthermore, the impact of these fluctuations could be magnified, because generally non-U.S. trading markets, particularly in emerging market countries, are smaller, less liquid and more volatile than U.S. trading markets.

We are subject to geopolitical risks, including acts or threats of terrorism, and actions taken by the U.S. or other governments in response and/or military conflicts, that could adversely affect business and economic conditions abroad as well as in the United States.

For a further discussion of our foreign credit and trading portfolio, see "Credit Risk Management—Foreign Portfolio" in the MD&A.

**Changes in governmental fiscal and monetary policy could adversely affect our businesses.** Our businesses and earnings are affected by domestic and international fiscal and monetary policy. For example, the Federal Reserve Board regulates the supply of money and credit in the United States and its policies determine in large part our cost of funds for lending, investing and capital raising activities and the return we earn on those loans and investments, both of which affect our net interest margin. The actions of the Federal Reserve Board also can materially affect the value of financial instruments we hold, such as debt securities and MSRs, and its policies also can affect our borrowers, potentially increasing the risk that they may fail to repay their loans. Our businesses and earnings are also affected by the fiscal or other policies that are adopted by various U.S. regulatory authorities, non-U.S. governments and international agencies. Changes in domestic and international fiscal and monetary policies are beyond our control and difficult to predict.

**We may suffer losses as a result of operational risk or technical system failures.** The potential for operational risk exposure exists throughout our organization. Integral to our performance is the continued efficacy of our internal processes, systems, relationships with third parties and the vast array of associates and key executives in our day-to-day and ongoing operations, including losses resulting from unauthorized trades by any associates. Operational risk also encompasses the failure to implement strategic objectives in a successful, timely and cost-effective manner. Failure to properly manage operational risk subjects us to risks of loss that may vary in size, scale and scope, including loss of customers. This also includes but is not limited to operational or technical failures, unlawful tampering with our technical systems, ineffectiveness or exposure due to interruption in third party support, as well as the loss of key individuals or failure on the part of key individuals to perform properly. For further discussion of operational risks and our operational risk management, see "Operational Risk Management" in the MD&A.

**Our inability to adapt our products and services to evolving industry standards and consumer preferences could harm our businesses.** Our business model is based on a diversified mix of businesses that provide a broad range of financial products and services, delivered through multiple distribution channels. Our success depends, in part, on our ability to adapt our products and services to evolving industry standards. There is increasing pressure by competitors to provide products and services at lower prices. This can reduce our net interest margin and revenues from our fee-based products and services. In addition, the widespread adoption of new technologies, including internet services, could require us to incur substantial expenditures to modify or adapt our existing products and services. We might not be successful in developing or introducing new products and services, responding or adapting to changes in

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consumer spending and saving habits, achieving market acceptance of our products and services, or sufficiently developing and maintaining loyal customers.

**Bank of America Corporation is a holding company and as such is dependent upon its subsidiaries for liquidity, including its ability to pay dividends.** Bank of America Corporation is a separate and distinct legal entity from our banking and nonbanking subsidiaries. We therefore depend on dividends, distributions and other payments from our banking and nonbanking subsidiaries to fund dividend payments on our common stock and preferred stock and to fund all payments on our other obligations, including debt obligations. Many of our subsidiaries are subject to laws that authorize regulatory agencies to block or reduce the flow of funds from those subsidiaries to Bank of America Corporation. Regulatory action of that kind could impede access to funds we need to make pay --

## Item 2. Properties

As of December 31, 2009, our principal offices and other materially important properties consisted of the following:

Property	Type	Primary Segment	Owned/ Leased	Occupied; Sub-Leased to 3 <sup>rd</sup> parties
Bank of America Corporate Center Charlotte, NC 100 Federal Street Boston, MA	60 story building	Principal executive offices-All Business Segments*	Owned	Occupy 48% (573,734 sq. ft.); sub-lease 50% (603,833 sq. ft.) of building
Bank of America Tower One Bryant Park New York, NY	37 story building	Global Wealth & Investment Management	Owned	Occupy 51% (636,202 sq. ft.); sub-lease 38% (470,029 sq. ft.) of building
2 World Financial Center New York, NY	52 story building	Global Markets; Global Wealth & Investment Management	49% Owned	Occupy 99% of building (1,628,416 sq. ft.)
4 World Financial Center New York, NY 222 Broadway New York, NY	44 story building (South Tower)	Global Markets; Global Wealth & Investment Management	Leased 49% Owned	Occupy 24% (609,155 sq. ft.); sub-lease 72% (1,815,833 sq. ft.) of building
31 story building	34 story building (North Tower)	Global Markets; Global Wealth & Investment Management	Owned	Occupy 78% (1,215,754 sq. ft.) of building
Hopewell Campus Hopewell, NJ	31 story building	Global Markets; Global Wealth & Investment Management	Owned	Occupy 93% (652,633 sq. ft.); sub-lease 7% (50,902 sq. ft.) of building
Jacksonville Complex Jacksonville, FL	8 building campus	All Business Segments	Owned	Occupy 99% (1,561,611 sq. ft.); sub-lease 1% of buildings
Jacksonville Campus Jacksonville, FL	9 building campus	All Business Segments	Leased	Occupy 80% (950,842 sq. ft.) of buildings
Concord Campus Concord, CA	4 building campus	All Business Segments	Owned	Occupy 95% (549,436 sq. ft.) of buildings
Merrill Lynch Financial Center London, England	4 building campus	All Business Segments	Owned	Occupy 82% (887,469 sq. ft.) of buildings
Other London Locations London, England	4 building campus	Global Markets; Global Wealth & Investment Management	Leased	Occupy 84% (485,495 sq. ft.) of buildings
Bank of America Merrill Lynch Japan Tokyo, Japan	3 buildings	Global Markets; Global Wealth & Investment Management	Leased	Occupy 70% (125,962 sq. ft.); sub-lease 5% of buildings
	20 story building	Global Markets; Global Wealth & Investment Management	Leased	Occupy 60% (158,861 sq. ft.); sub-lease 24% (62,613 sq. ft.) of building

\* All Business Segments consists of *Deposits, Global Card Services, Home Loans & Insurance, Global Banking, Global Markets and Global Wealth & Investment Management.*

We own or lease approximately 118.7 million square feet in 27,779 locations in 50 states in the United States, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico. We also own or lease approximately 6.9 million square feet in 90 cities in 44 foreign countries. We believe that the properties we own or lease are adequate for our needs and well maintained.

## Item 3. Legal Proceedings

See "Litigation and Regulatory Matters" in *Note 14 – Commitments and Contingencies* to the Consolidated Financial Statements beginning on page 160 for Bank of America's litigation disclosure which is incorporated herein by reference.

## Item 4. Submission of Matters To A Vote of Security Holders

There were no matters submitted to a vote of stockholders during the quarter ended December 31, 2009.

In addition, our right to participate in a distribution of assets upon a subsidiary's liquidation or reorganization is subject to the prior claims of the subsidiary's creditors. For a further discussion regarding our ability to pay dividends, see "Government Supervision and Regulation – Distributions" on page 4 of this report and *Note 15 – Shareholders' Equity and Earnings Per Common Share* and *Note 16 – Regulatory Requirements and Restrictions* to the Consolidated Financial Statements.

## Item 1B. Unresolved Staff Comments

There are no unresolved written comments that were received from the SEC's staff 180 days or more before the end of our 2009 fiscal year relating to our periodic or current reports filed under the Securities Exchange Act of 1934.

## Executive Officers of The Registrant

The name, age and position of each of our current executive officers are listed below along with such officer's business experience. Unless otherwise indicated, executive officers are appointed by the Board to hold office until their successors are elected and qualified or until their earlier resignation or removal.

**Neil A. Cotty (55) Interim Chief Financial Officer** since February 1, 2010 and **Chief Accounting Officer** since July 2009; Chief Financial Officer, Global Banking and Global Wealth and Investment Management from October 2008 to July 2009; Chief Accounting Officer from April 2004 to September 2008; Senior Finance Executive for Consumer Products supporting Commercial Banking (now Global Commercial Banking) from October 2003 to April 2004; Senior Finance Executive for Consumer Products from January 2003 to October 2003.

**David C. Darnell (56) President, Global Commercial Banking** since July 2005. President, Middle Market Banking Group from June 2001 to July 2005; President, Bank of America Central Region from August 2000

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to June 2001; President, Bank of America Midwest and Texas from September 1996 to August 2000; Executive Vice President and Commercial Division Executive in Florida from January 1989 to September 1996.

**Barbara J. Desoer (57) President, Bank of America Home Loans and Insurance**, since July 2008; Chief Technology and Operations Officer from August 2004 to July 2008; President, Consumer Products from July 2001 to August 2004; Director of Marketing from September 1999 to July 2001; President, Bank of America Northern California from January 1998 to September 1999.

**Sallie L. Krawcheck (45) President, Global Wealth and Investment Management** since August 2009; Chairman of Global Wealth Management of Citigroup, Inc. from January 2007 until December 2008; Chief Executive Officer of Global Wealth Management of Citigroup, Inc. from January 2007 to September 2008; Chief Financial Officer and Head of Strategy Citigroup, Inc. from November 2004 to January 2007; Chairman and Chief Executive Officer - SmithBarney of Citigroup, Inc. from October 2002 to November 2004; Chairman and Chief Executive Officer of Sanford C. Bernstein & Co. prior to 2002.

**Thomas K. Montag (52) President, Global Banking and Markets** since August 2009; President, Global Markets from January 2009 to August 2009; Executive Vice President and Head of Global Sales and Trading of Merrill Lynch & Co., Inc. from August 2008 to December 2008; Co-head, Global Securities of The Goldman Sachs Group, Inc. from 2006 to 2008; Co-president, Japanese Operations of The Goldman Sachs Group, Inc. from 2002 to 2007; Member, Management Committee of The Goldman Sachs Group, Inc. from 2002 to 2008; Member, Fixed Income, Currency and Commodities & Equities Executive Committee of The Goldman Sachs Group, Inc. from 2000 to 2008.

**Brian T. Moynihan (50) President and Chief Executive Officer** since January 2010; President, Consumer and Small Business Banking, from August 2009 to December 2009; President, Global Banking and Wealth

Management (now Global Wealth and Investment Management) from January 2009 to August 2009; General Counsel from December 2008 to January 2009; President, Global Corporate and Investment Banking (now Global Banking and Markets) from October 2007 to December 2008; President, Global Wealth and Investment Management from April 2004 to October 2007; Executive Vice President of FleetBoston Financial Corporation from 1999 to April 2004, with responsibility for Brokerage and Wealth Management from 2000 and Regional Commercial Financial Services and Investment Management from May 2003.

**Edward P. O'Keefe (54) General Counsel** since January 2009; Deputy General Counsel and Head of Litigation from December 2008 to January 2009; Global Compliance and Operational Risk Executive and Senior Privacy Executive from September 2008 to December 2008; Deputy General Counsel for Staff Support from August 2004 to September 2008.

**Joe L. Price (49) President; Consumer, Small Business and Card Banking** since February 1, 2010; Chief Financial Officer from January 2007 to January 2010; Global Corporate and Investment Banking Risk Management Executive from June 2003 to December 2006; Senior Vice President, Corporate Strategy and President, Consumer Special Assets from July 2002 to May 2003; President, Consumer Finance from November 1999 to July 2002; Corporate Risk Evaluation Executive and General Auditor from August 1997 to October 1999; Controller from June 1995 to July 1997; Accounting Policy and Finance Executive from April 1993 to May 1995.

**Bruce R. Thompson (45) Chief Risk Officer** since January 2010; Head of Global Capital Markets from July 2008 to January 2010; Co-head of Capital Markets (now Global Capital Markets) from October 2007 to July 2008; Co-head of Global Credit Products from June 2007 to October 2007; Co-head of Global Leveraged Finance from March 2007 to June 2007; Head of U.S. Leveraged Finance Capital Markets from May 2006 to March 2007; Managing Director of Banc of America Securities LLC, from 1996 to May 2006.



## Part II

### Bank of America Corporation and Subsidiaries

#### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

The principal market on which our common stock is traded is the New York Stock Exchange. Our common stock is also listed on the London Stock Exchange, and certain shares are listed on the Tokyo Stock Exchange. The following table sets forth the high and low closing sales prices of the common stock on the New York Stock Exchange for the periods indicated:

	Quarter	High	Low
2008	first	\$ 45.03	\$ 35.31
	second	40.86	23.87
	third	37.48	18.52
	fourth	38.13	11.25
2009	first	14.33	3.14
	second	14.17	7.05
	third	17.98	11.84
	fourth	18.59	14.58

As of February 24, 2010, there were 257,307 registered shareholders of common stock. During 2008 and 2009, we paid dividends on the common stock on a quarterly basis.

The following table sets forth dividends paid per share of our common stock for the periods indicated:

	Quarter	Dividend
2008	first	\$ 0.64
	second	0.64
	third	0.64
	fourth	0.32
2009	first	0.01
	second	0.01
	third	0.01
	fourth	0.01

For additional information regarding our ability to pay dividends, see the discussion under the heading "Government Supervision and Regulation – Distributions" on page 4 of this report and *Note 15 – Shareholders' Equity and Earnings Per Common Share* to the Consolidated Financial Statements beginning on page 171, and *Note 16 – Regulatory Requirements and Restrictions* to the Consolidated Financial Statements beginning on page 175, which are incorporated herein by reference.

For information on our equity compensation plans, see Item 12 beginning on page 204 of this report and *Note 18 – Stock-Based Compensation Plans* to the Consolidated Financial Statements beginning on page 182, both of which are incorporated herein by reference.

The table below presents share repurchase activity for the three months ended December 31, 2009. For additional information regarding share repurchases on these restrictions, see *Note 15 – Shareholders' Equity and Earnings Per Common Share* to the Consolidated Financial Statements on page 171 which is incorporated herein by reference.

	Common Shares Repurchased <sup>(1)</sup>	Weighted Average Per Share Price	Shares Purchased as Part of Publicly Announced Programs	Remaining Buyback Authority <sup>(2)</sup>	
			Amounts	Shares	
(Dollars in millions, except per share information; shares in thousands)					
October 1 – 31, 2009	98	15.96	-	3,750	75,000
November 1 – 30, 2009	24	14.28	-	3,750	75,000
December 1 – 31, 2009	314	14.50	-	3,750	75,000
<b>Three months ended December 31, 2009</b>	<b>435</b>	<b>14.82</b>			

<sup>(1)</sup> Consists of shares of our common stock purchased by participants under certain retirement plans and shares acquired by us in connection with satisfaction of tax withholding obligations on vested restricted stock units and certain forfeitures and terminations of employment related to awards under equity incentive plans.

<sup>(2)</sup> On July 23, 2008, the Board authorized a stock repurchase program of up to 75 million shares of our common stock at an aggregate cost not to exceed \$3.75 billion and is limited to a period of 12 to 18 months. The stock repurchase program expired on January 23, 2010.

We did not have any unregistered sales of our equity securities in 2009, except as previously disclosed on Form 8-K.

#### Item 6. Selected Financial Data

See Table 6 in the MD&A on page 24 and Table XII of the Statistical Tables on page 105 which are incorporated herein by reference.

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**Item 7. Bank of America Corporation and Subsidiaries  
Management's Discussion and Analysis of Financial Condition and Results of Operations**

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Throughout the MD&A, we use certain acronyms and abbreviations which are defined in the Glossary beginning on page 108.

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

*This report on Form 10-K and the documents into which it may be incorporated by reference may contain, and from time to time our management may make, certain statements that constitute forward-looking statements. Words such as "expects," "anticipates," "believes," "estimates" and other similar expressions or future or conditional verbs such as "will," "should," "would" and "could" are intended to identify such forward-looking statements. These statements are not historical facts, but instead represent the current expectations, plans or forecasts of Bank of America Corporation and its subsidiaries (the Corporation) regarding the Corporation's integration of the Merrill Lynch and Countrywide acquisitions and related cost savings, future results and revenues, credit losses, credit reserves and charge-offs, delinquency trends, nonperforming asset levels, level of preferred dividends, service charges, the closing of the sales of Columbia Management (Columbia) and First Republic Bank, effective tax rate, noninterest expense, impact of changes in fair value of Merrill Lynch structured notes, impact of new accounting guidance regarding consolidation on capital and reserves, mortgage production, the effect of various legal proceedings discussed in "Litigation and Regulatory Matters" in Note 14 – Commitments and Contingencies to the Consolidated Financial Statements and other matters relating to the Corporation and the securities that we may offer from time to time. These statements are not guarantees of future results or performance and involve certain risks, uncertainties and assumptions that are difficult to predict and often are beyond the Corporation's control. Actual outcomes and results may differ materially from those expressed in, or implied by, the Corporation's forward-looking statements.*

*You should not place undue reliance on any forward-looking statement and should consider the following uncertainties and risks, as well as the risks and uncertainties discussed elsewhere in this report, including under Item 1A. "Risk Factors," and in any of the Corporation's other subsequent Securities and Exchange Commission (SEC) filings: negative economic conditions that adversely affect the general economy, housing prices, job market, consumer confidence and spending habits which may affect, among other things, the credit quality of our loan portfolios (the degree of the impact of which is dependent upon the duration and severity of these conditions); the Corporation's modification policies and related results; the level and volatility of the capital markets, interest*

*rates, currency values and other market indices which may affect, among other things, our liquidity and the value of our assets and liabilities and, in turn, our trading and investment portfolios; changes in consumer, investor and counterparty confidence in, and the related impact on, financial markets and institutions; the Corporation's credit ratings and the credit ratings of our securitizations which are important to the Corporation's liquidity, borrowing costs and trading revenues; estimates of fair value of certain of the Corporation's assets and liabilities which could change in value significantly from period to period; legislative and regulatory actions in the United States (including the Electronic Fund Transfer Act, the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 and related regulations) and internationally which may increase the Corporation's costs and adversely affect the Corporation's businesses and economic conditions as a whole; the impact of litigation and regulatory investigations, including costs, expenses, settlements and judgments; various monetary and fiscal policies and regulations of the U.S. and non-U.S. governments; changes in accounting standards, rules and interpretations (including new accounting guidance on consolidation) and the impact on the Corporation's financial statements; increased globalization of the financial services industry and competition with other U.S. and international financial institutions; the Corporation's ability to attract new employees and retain and motivate existing employees; mergers and acquisitions and their integration into the Corporation, including our ability to realize the benefits and cost savings from and limit any unexpected liabilities acquired as a result of the Merrill Lynch acquisition; the Corporation's reputation; and decisions to downsize, sell or close units or otherwise change the business mix of the Corporation.*

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

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

## Executive Summary

### Business Overview

The Corporation is a Delaware corporation, a bank holding company and a financial holding company. Our principal executive offices are located in the Bank of America Corporate Center in Charlotte, North Carolina. Through our banking and various nonbanking subsidiaries throughout the United States and in certain international markets, we provide a diversified range of banking and nonbanking financial services and products through six business segments: *Deposits, Global Card Services, Home Loans & Insurance, Global Banking, Global Markets* and *Global Wealth & Investment Management (GWIM)*, with the remaining operations recorded in *All Other*. At December 31, 2009, the Corporation had \$2.2 trillion in assets and approximately 284,000 full-time equivalent employees. On January 1, 2009, we acquired Merrill Lynch & Co., Inc. (Merrill Lynch) and as a result we have one of the largest wealth management businesses in the world with approximately 15,000 financial advisors and more than \$2.1 trillion in

net client assets. Additionally, we are a global leader in corporate and investment banking and trading across a broad range of asset classes serving corporations, governments, institutions and individuals around the world. On July 1, 2008, we acquired Countrywide Financial Corporation (Countrywide) significantly expanding our mortgage origination and servicing capabilities, making us a leading mortgage originator and servicer.

As of December 31, 2009, we currently operate in all 50 states, the District of Columbia and more than 40 foreign countries. In addition, our retail banking footprint covers approximately 80 percent of the U.S. population and in the U.S. we serve approximately 59 million consumer and small business relationships with approximately 6,000 banking centers, more than 18,000 ATMs, nationwide call centers, and leading online and mobile banking platforms. We have banking centers in 12 of the 15 fastest growing states and have leadership positions in eight of those states. We offer industry-leading support to approximately four million small business owners.

The following table provides selected consolidated financial data for 2009 and 2008.

**Table 1 Selected Financial Data**

(Dollars in millions, except per share information)

	2009	2008
<b>Income statement</b>		
Revenue, net of interest expense (FTE basis)	\$ 120,944	\$ 73,976
Net income	6,276	4,008
Diluted earnings (loss) per common share	(0.29)	0.54
Average diluted common shares issued and outstanding (in millions)	7,729	4,596
Dividends paid per common share	\$ 0.04	\$ 2.24
<b>Performance ratios</b>		
Return on average assets	0.26%	0.22%
Return on average tangible shareholders' equity <sup>(1)</sup>	4.18	5.19
Efficiency ratio (FTE basis) <sup>(1)</sup>	55.16	56.14
<b>Balance sheet at year end</b>		
Total loans and leases	\$ 900,128	\$ 931,446
Total assets	2,223,299	1,817,943
Total deposits	991,611	882,997
Total common shareholders' equity	194,236	139,351
Total shareholders' equity	231,444	177,052
Common shares issued and outstanding (in millions)	8,650	5,017
<b>Asset quality</b>		
Allowance for loan and lease losses	\$ 37,200	\$ 23,071
Nonperforming loans, leases and foreclosed properties	35,747	18,212
Allowance for loan and lease losses as a percentage of total nonperforming loans and leases	111%	141%
Net charge-offs	\$ 33,688	\$ 16,231
Net charge-offs as a percentage of average loans and leases outstanding	3.58%	1.79%
<b>Capital ratios</b>		
Tier 1 common	7.81%	4.80%
Tier 1	10.40	9.15
Total	14.66	13.00
Tier 1 leverage	6.91	6.44

<sup>(1)</sup>Return on average tangible shareholders' equity and the efficiency ratio are non-GAAP measures. Other companies may define or calculate these measures differently. For additional information on these ratios and a corresponding reconciliation to GAAP financial measures, see Supplemental Financial Data beginning on page 25.

### 2009 Economic Environment

2009 was a transition year as the U.S. economy began to stabilize although unemployment continued to rise. Gross Domestic Product, which fell sharply in the first quarter and continued to decline in the second quarter, rebounded in the second half of the year but remained well below its earlier expansion peak level. Consumer spending, which had declined sharply in the second half of 2008, rose modestly in each quarter of 2009 and received a boost from the U.S. government's Cash-for-Clunkers auto subsidies in the third quarter. Consumer spending remained tentative as households saved more and paid down debt. After reaching lows in January, housing activity increased compared to 2008 as home sales and new housing starts rose through the year lifting residential construction. Nevertheless, large inventories of unsold homes and the

increase in foreclosures continued to weigh heavily on the housing sector.

Businesses cut production, inventories, employment and capital spending aggressively in response to the financial crisis in late 2008 continuing into 2009. Production and capital spending fell in the first half of the year, inventories declined for the first three quarters and employment declined through the entire year although at a progressively lower rate. U.S. exports increased in the second half of the year reflecting the rebound of certain international economies following the global recession. Despite the modest growth in product demand and output in the second half of the year, job layoffs mounted, and the unemployment rate increased to over 10 percent in the fourth quarter, the highest since the early 1980s. Producing more with fewer workers drove improvement in labor productivity, boosting profits in the second half of the year.

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The Board of Governors of the Federal Reserve System (Federal Reserve) lowered the federal funds rate to close to zero percent early in the first quarter and in mid-March announced a program of quantitative easing, in which it purchased U.S. Treasuries, mortgage-backed securities (MBS) and long-term debt of government-sponsored enterprises (GSEs). This program contributed to lower mortgage rates generating an increase in consumer mortgage refinancing which helped homeowners, and along with lower home prices, stimulated activity in the housing market.

In early 2009, the short-term funding markets began to return to normal and the U.S. government began to unwind its alternative liquidity facilities, and loan and asset guarantee programs. By mid-year, order had been restored to most financial market sectors. The stock market fell sharply through mid-March, but rebounded abruptly, triggered in part by the U.S. government's bank stress tests and banks' successful capital raising. The stock market rally through year end retraced some of the losses in household net worth and increased consumer confidence.

Our consumer businesses were affected by the economic factors mentioned above, as our *Deposits* business was negatively impacted by spread compression. *Global Card Services* was affected as reduced consumer spending led to lower revenue and a higher level of bankruptcies led to increased provision for credit losses. *Home Loans & Insurance* benefited from the low interest rate environment and lower home prices, driving higher mortgage production income; however, higher unemployment and falling home values drove increases in the provision for credit losses. In addition, the factors mentioned above negatively impacted growth in the consumer loan portfolio including credit card and real estate.

*Global Banking* felt the impact of the above economic factors as businesses paid down debt reducing loan balances. In addition, the commercial portfolio within *Global Banking* declined due to further reductions in spending by businesses as they sought to increase liquidity, and the resurgence of capital markets which allowed corporate clients to issue bonds and equity to replace loans as a source of funding. The commercial real estate and commercial – domestic portfolios experienced higher net charge-offs reflecting deterioration across a broad range of industries, property types and borrowers. In addition to increased net charge-offs, nonperforming loans, leases and foreclosed properties and commercial criticized utilized exposures were higher which contributed to increased reserves across most portfolios during the year.

Capital markets conditions showed some signs of improvement during 2009 and *Global Markets* took advantage of the favorable trading environment. Market dislocations that occurred throughout 2008 continued to impact our results in 2009, although to a lesser extent, as we experienced reduced write-downs on legacy assets compared to the prior year. During 2009, our credit spreads improved driving negative credit valuation adjustments on the Corporation's derivative liabilities recorded in *Global Markets* and on Merrill Lynch structured notes recorded in *All Other*.

*GWIM* also benefited from the improvement in capital markets driving growth in client assets resulting in increased fees and brokerage commissions. In addition, we continued to provide support to certain cash funds during 2009 although to a lesser extent than in the prior year. As of December 31, 2009, all capital commitments to these cash funds had been terminated and the funds no longer hold investments in structured investment vehicles (SIVs).

On a going forward basis, the continued weakness in the global economy and recent and proposed regulatory changes will continue to affect many of the markets in which we do business and may adversely impact our results for 2010. The impact of these conditions is dependent upon the timing, degree and sustainability of the economic recovery.

## Regulatory Overview

In November 2009, the Federal Reserve issued amendments to Regulation E, which implement the Electronic Fund Transfer Act (Regulation E). The new rules have a compliance date of July 1, 2010. These amendments change, among other things, the way we and other banks may charge overdraft fees; by limiting our ability to charge an overdraft fee for ATM and one-time debit card transactions that overdraw a consumer's account, unless the consumer affirmatively consents to the bank's payment of overdrafts for those transactions. Changes to our overdraft practices will negatively impact future service charge revenue primarily in *Deposits*.

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) was signed into law. The majority of the CARD Act provisions became effective in February 2010. The CARD Act legislation contains comprehensive credit card reform related to credit card industry practices including significantly restricting banks' ability to change interest rates and assess fees to reflect individual consumer risk, changing the way payments are applied and requiring changes to consumer credit card disclosures. Under the CARD Act, banks must give customers 45 days notice prior to a change in terms on their account and the grace period for credit card payments changes from 14 days to 21 days. The CARD Act also requires banks to review any accounts that were repriced since January 1, 2009 for a possible rate reduction. As announced in October 2009, we did not increase interest rates on consumer card accounts in response to provisions in the CARD Act prior to its effective date unless the customer's account fell past due or was based on a variable interest rate. Within *Global Card Services*, the provisions in the CARD Act are expected to negatively impact net interest income, due to the restrictions on our ability to reprice credit cards based on risk, and card income due to restrictions imposed on certain fees.

In July 2009, the Basel Committee on Banking Supervision released a consultative document entitled "Revisions to the Basel II Market Risk Framework" that would significantly increase the capital requirements for trading book activities if adopted as proposed. The proposal recommended implementation by December 31, 2010, but regulatory agencies are currently evaluating the proposed rulemaking and related impacts before establishing final rules. As a result, we cannot determine the implementation date or the final capital impact.

In December 2009, the Basel Committee on Banking Supervision issued a consultative document entitled "Strengthening the Resilience of the Banking Sector." If adopted as proposed, this could increase significantly the aggregate equity that bank holding companies are required to hold by disqualifying certain instruments that previously have qualified as Tier 1 capital. In addition, it would increase the level of risk-weighted assets. The proposal could also increase the capital charges imposed on certain assets potentially making certain businesses more expensive to conduct. Regulatory agencies have not opined on the proposal for implementation. We continue to assess the potential impact of the proposal.

As a result of the financial crisis, the financial services industry is facing the possibility of legislative and regulatory changes that would impose significant, adverse changes on its ability to serve both retail and wholesale customers. A proposal is currently being considered to levy a tax or fee on financial institutions with assets in excess of \$50 billion to repay the costs of TARP, although the proposed tax would continue even after those costs are repaid. If enacted as proposed, the tax could significantly affect our earnings, either by increasing the costs of our liabilities or causing us to reduce our assets. It remains uncertain whether the tax will be enacted, to whom it would apply, or the amount of the tax we would be required to pay. It is also unclear the extent to which the costs of such a tax could be recouped through higher pricing.

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In addition, various proposals for broad-based reform of the financial regulatory system are pending. A majority of these proposals would not disrupt our core businesses, but a proposal could ultimately be adopted that adversely affects certain of our businesses. The proposals would require divestment of certain proprietary trading activities, or limit private equity investments. Other proposals, which include limiting the scope of an institution's derivatives activities, or forcing certain derivatives activities to be traded on exchanges, would diminish the demand for, and profitability of, certain businesses. Several other proposals would require issuers to retain unhedged interests in any asset that is securitized, potentially severely restricting the secondary market as a source of funding for consumer or commercial lending. There are also numerous proposals pending on how to resolve a failed systemically important institution. In light of the current regulatory environment, one ratings agency has placed Bank of America and certain other banks on negative outlook, and therefore adoption of such provisions may adversely affect our access to credit markets. It remains unclear whether any of these proposals will ultimately be enacted, and what form they may take.

For additional information on these items, refer to Item 1A., Risk Factors.

### Performance Overview

Net income was \$6.3 billion in 2009, compared with \$4.0 billion in 2008. Including preferred stock dividends and the impact from the repayment of the U.S. government's \$45.0 billion preferred stock investment in the Corporation under the Troubled Asset Relief Program (TARP), income applicable to common shareholders was a net loss of \$2.2 billion, or \$(0.29) per diluted share. Those results compared with 2008 net income applicable to common shareholders of \$2.6 billion, or \$0.54 per diluted share.

Revenue, net of interest expense on a fully taxable-equivalent (FTE) basis, rose to \$120.9 billion representing a 63 percent increase from \$74.0 billion in 2008 reflecting in part the addition of Merrill Lynch and the full-year impact of Countrywide.

Net interest income on a FTE basis increased to \$48.4 billion compared with \$46.6 billion in 2008. The increase was the result of a favorable rate environment, improved hedge results and the acquisitions of Countrywide and Merrill Lynch, offset in part by lower asset and liability management (ALM) portfolio levels, lower consumer loan balances and an increase in nonperforming loans. The net interest yield narrowed 33 basis points (bps) to 2.65 percent.

Noninterest income rose to \$72.5 billion compared with \$27.4 billion in 2008. Higher trading account profits, equity investment income, investment and brokerage services fees and investment banking income reflected the addition of Merrill Lynch while higher mortgage banking and insurance income reflected the full-year impact of Countrywide. Gains on sales of debt securities increased driven by sales of agency MBS and collateralized mortgage obligations (CMOs). Equity investment income benefited from pre-tax gains of \$7.3 billion related to the sale of portions of our investment in China Construction Bank (CCB) and a pre-tax gain of \$1.1 billion on our investment in BlackRock, Inc. (BlackRock). In addition, trading account profits benefited from decreased write-downs on legacy assets of \$6.5 billion compared to the prior year. The other income (loss) category included a \$3.8 billion gain from the contribution of our merchant processing business to a joint venture. This was partially offset by a decline in card income of \$5.0 billion mainly due to higher credit losses on securitized credit card loans and lower fee income. In addition, noninterest income was negatively impacted by \$4.9 billion in net losses mostly related to credit valuation adjustments on the Merrill Lynch structured notes.

The provision for credit losses was \$48.6 billion, an increase of \$21.7 billion compared to 2008, reflecting deterioration in the economy and housing markets which drove higher credit costs in both the

consumer and commercial portfolios. Higher reserve additions resulted from further deterioration in the purchased impaired consumer portfolios obtained through acquisitions, broad-based deterioration in the core commercial portfolio and the impact of deterioration in the housing markets on the residential mortgage portfolio.

Noninterest expense increased to \$66.7 billion compared with \$41.5 billion in 2008. Personnel costs and other general operating expenses rose due to the addition of Merrill Lynch and the full-year impact of Countrywide. Pre-tax merger and restructuring charges rose to \$2.7 billion from \$935 million a year earlier due to the acquisition of Merrill Lynch.

For the year, we recognized a tax benefit of \$1.9 billion compared with tax expense of \$420 million in 2008. The decrease in tax expense was due to certain tax benefits, as well as a shift in the geographic mix of the Corporation's earnings driven by the addition of Merrill Lynch.

### TARP Repayment

In efforts to help stabilize financial institutions, in October 2008, the U.S. Department of the Treasury (U.S. Treasury) created the TARP to invest in certain eligible financial institutions in the form of non-voting, senior preferred stock. We participated in the TARP by issuing to the U.S. Treasury non-voting perpetual preferred stock (TARP Preferred Stock) and warrants for a total of \$45.0 billion. On December 2, 2009, the Corporation received approval from the U.S. Treasury and the Federal Reserve to repay the \$45.0 billion investment. In accordance with the approval, on December 9, 2009, we repurchased all shares of the TARP Preferred Stock by using \$25.7 billion from excess liquidity and \$19.3 billion in proceeds from the sale of 1.3 billion units of Common Equivalent Securities (CES) valued at \$15.00 per unit. In addition, the Corporation agreed to increase equity by \$3.0 billion through asset sales in 2010 and approximately \$1.7 billion through the issuance in 2010 of restricted stock in lieu of a portion of incentive cash compensation to certain of the Corporation's associates as part of their 2009 year-end performance award. As a result of repurchasing the TARP Preferred Stock, the Corporation accelerated the remaining accretion of the issuance discount on the TARP Preferred Stock of \$4.0 billion and recorded a corresponding charge to retained earnings and income (loss) applicable to common shareholders in the calculation of diluted earnings per common share. While participating in the TARP, we recorded \$7.4 billion in dividends and accretion, including \$2.7 billion in cash dividends and \$4.7 billion of accretion on the TARP Preferred Stock (the remaining accretion of \$4.0 billion was included as part of the \$45.0 billion cash payment). Repayment will save us approximately \$3.6 billion in annual dividends, including \$2.9 billion in cash and \$720 million of discount accretion. At the time we repurchased the TARP Preferred Stock, we did not repurchase the related warrants. The U.S. Treasury recently announced its intention to auction, during March 2010, these warrants.

We issued the CES, which qualify as Tier 1 common capital, because we did not have a sufficient number of authorized common shares available for issuance at the time we repaid the TARP Preferred Stock. Each CES consisted of one depositary share representing a 1/1000th interest in a share of our Common Equivalent Junior Preferred Stock, Series S (Common Equivalent Stock) and a contingent warrant to purchase 0.0467 of a share of our common stock for a purchase price of \$0.01 per share. The Corporation held a special meeting of shareholders on February 23, 2010 at which we obtained stockholder approval of an amendment to our amended and restated certificate of incorporation to increase the number of authorized shares of our common stock, and following the effective date of the amendment, on February 24, 2010, the Common Equivalent Stock converted in full into our common stock and the contingent warrants expired without having become exercisable and the CES ceased to exist.

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**Recent Accounting Developments**

On January 1, 2010, the Corporation adopted new Financial Accounting Standards Board (FASB) guidance that results in the consolidation of entities that were off-balance sheet as of December 31, 2009. The adoption of this new accounting guidance resulted in a net incremental increase in assets on January 1, 2010, on a preliminary basis, of \$100 billion, including \$70 billion resulting from consolidation of credit card trusts and \$30 billion from consolidation of other special purpose entities including multi-

seller conduits. These preliminary amounts are net of retained interests in securitizations held on our balance sheet and an \$11 billion increase in the allowance for loan losses, the majority of which relates to credit card receivables. This increase in the allowance for loan losses was recorded on January 1, 2010 as a charge net-of-tax to retained earnings for the cumulative effect of the adoption of this new accounting guidance. Initial recording of these assets and related allowance and liabilities on the Corporation's balance sheet had no impact on results of operations.

**Segment Results**

**Table 2 Business Segment Results**

	Total Revenue <sup>(1)</sup>		Net Income (Loss)	
	2009	2008	2009	2008
(Dollars in millions)				
Deposits	\$ 14,008	\$17,840	\$ 2,506	\$ 5,512
Global Card Services <sup>(2)</sup>	29,342	31,220	(5,555)	1,234
Home Loans & Insurance	16,902	9,310	(3,838)	(2,482)
Global Banking	23,035	16,796	2,969	4,472
Global Markets	20,626	(3,831)	7,177	(4,916)
Global Wealth & Investment Management	18,123	7,809	2,539	1,428
All Other <sup>(2)</sup>	(1,092)	(5,168)	478	(1,240)
Total FTE basis	120,944	73,976	6,276	4,008
FTE adjustment	(1,301)	(1,194)	-	-
<b>Total Consolidated</b>	<b>\$119,643</b>	<b>\$72,782</b>	<b>\$ 6,276</b>	<b>\$ 4,008</b>

<sup>(1)</sup>Total revenue is net of interest expense, and is on a FTE basis for the business segments and *All Other*.  
<sup>(2)</sup>*Global Card Services* is presented on a managed basis with a corresponding offset recorded in *All Other*.

*Deposits* net income narrowed due to declines in net revenue and increased noninterest expense. Net revenue declined mainly due to a lower net interest income allocation from ALM activities and spread compression as interest rates declined. This decrease was partially offset by growth in average deposits on strong organic growth and the migration of certain client deposits from *GWIM* partially offset by an expected decline in higher-yielding Countrywide deposits. Noninterest expense increased as a result of higher Federal Deposit Insurance Corporation (FDIC) insurance and special assessment costs.

*Global Card Services* reported a net loss as credit costs continued to rise reflecting weak economies in the U.S., Europe and Canada. Managed net revenue declined mainly due to lower fee income driven by changes in consumer retail purchase and payment behavior in the current economic environment and the absence of one-time gains that positively impacted 2008 results. The decline was partially offset by higher net interest income as lower funding costs outpaced the decline in average managed loans. Provision for credit losses increased as economic conditions led to higher losses.

*Home Loans & Insurance* net loss widened as higher credit costs continued to negatively impact results. Net revenue and noninterest expense increased primarily driven by the full-year impact of Countrywide and higher loan production from increased refinance activity. Provision for credit losses increased driven by continued economic and housing market weakness combined with further deterioration in the purchased impaired portfolio.

*Global Banking* net income declined as increases in revenue driven by strong deposit growth, the impact of the Merrill Lynch acquisition and favorable market conditions for debt and equity issuances were more than offset by increased credit costs. Provision for credit losses increased driven by higher net charge-offs and reserve additions in the

commercial real estate and commercial – domestic portfolios. These increases reflect deterioration across a broad range of property types, industries and borrowers. Noninterest expense increased as a result of the Merrill Lynch acquisition, and higher FDIC insurance and special assessment costs.

*Global Markets* net income increased driven by the addition of Merrill Lynch and a more favorable trading environment. Net revenue increased due to improved market conditions and new issuance capabilities due to the addition of Merrill Lynch driving increased fixed income, currency and commodity, and equity revenues. In addition, improved market conditions led to significantly lower write-downs on legacy assets compared with the prior year.

*GWIM* net income increased driven by the addition of Merrill Lynch partially offset by a lower net interest income allocation from ALM activities, the migration of client balances to *Deposits* and *Home Loans & Insurance*, lower average equity market levels and higher credit costs. Net revenue more than doubled as a result of higher investment and brokerage services income due to the addition of Merrill Lynch, the gain on our investment in BlackRock and the lower level of support we provided for certain cash funds. Provision for credit losses increased driven by higher net charge-offs in the consumer real estate and commercial portfolios.

*All Other* net income increased driven by higher equity investment income and increased gains on the sale of debt securities partially offset by negative credit valuation adjustments on certain Merrill Lynch structured notes as credit spreads improved. Results were also impacted by lower other-than-temporary impairment charges primarily related to non-agency CMOs. Excluding the securitization impact to show *Global Card Services* on a managed basis, the provision for credit losses increased due to higher credit costs related to our ALM residential mortgage portfolio.

## Financial Highlights

### Net Interest Income

Net interest income on a FTE basis increased \$1.9 billion to \$48.4 billion for 2009 compared to 2008. The increase was driven by the improved interest rate environment, improved hedge results, the acquisitions of Countrywide and Merrill Lynch, the impact of new draws on previously securitized accounts and the contribution from market-based net interest income related to our *Global Markets* business which benefited from the Merrill Lynch acquisition. These items were partially offset by the impact of deleveraging the ALM portfolio earlier in 2009, lower consumer loan levels and the adverse impact of nonperforming loans. The net interest yield on a FTE basis decreased 33 bps to 2.65 percent for 2009 compared to 2008 due to the factors related to the core businesses as described above. For more information on net interest income on a FTE basis, see Tables I and II beginning on page 95.

### Noninterest Income

**Table 3 Noninterest Income**

(Dollars in millions)	2009	2008
Card income	\$ 8,353	\$13,314
Service charges	11,038	10,316
Investment and brokerage services	11,919	4,972
Investment banking income	5,551	2,263
Equity investment income	10,014	539
Trading account profits (losses)	12,235	(5,911)
Mortgage banking income	8,791	4,087
Insurance income	2,760	1,833
Gains on sales of debt securities	4,723	1,124
Other income (loss)	(14)	(1,654)
Net impairment losses recognized in earnings on available-for-sale debt securities	(2,836)	(3,461)
<b>Total noninterest income</b>	<b>\$72,534</b>	<b>\$27,422</b>

Noninterest income increased \$45.1 billion to \$72.5 billion in 2009 compared to 2008.

- Card income on a held basis decreased \$5.0 billion primarily due to higher credit losses on securitized credit card loans and lower fee income which was driven by changes in consumer retail purchase and payment behavior in the current economic environment.
- Service charges grew \$722 million due to the acquisition of Merrill Lynch.
- Investment and brokerage services increased \$6.9 billion primarily due to the acquisition of Merrill Lynch partially offset by the impact of lower valuations in the equity markets driven by the market downturn in the fourth quarter of 2008, which improved modestly in 2009, and net outflows in the cash funds.
- Investment banking income increased \$3.3 billion due to higher debt, equity and advisory fees reflecting the increased size of the investment banking platform from the acquisition of Merrill Lynch.
- Equity investment income increased \$9.5 billion driven by \$7.3 billion in gains on sales of portions of our CCB investment and a \$1.1 billion gain related to our BlackRock investment. The results were partially offset by the absence of the Visa-related gain recorded during the prior year.
- Trading account profits (losses) increased \$18.1 billion primarily driven by favorable core trading results and reduced write-downs on legacy

assets partially offset by negative credit valuation adjustments on derivative liabilities of \$801 million due to improvement in the Corporation's credit spreads.

- Mortgage banking income increased \$4.7 billion driven by higher production and servicing income of \$3.2 billion and \$1.5 billion. These increases were primarily due to increased volume as a result of the full-year impact of Countrywide and higher refinance activity partially offset by lower MSR results, net of hedges.
- Insurance income increased \$927 million due to the full-year impact of Countrywide's property and casualty businesses.
- Gains on sales of debt securities increased \$3.6 billion due to the favorable interest rate environment and improved credit spreads. Gains were primarily driven by sales of agency MBS and CMOs.
- The net loss in other decreased \$1.6 billion primarily due to the \$3.8 billion gain from the contribution of our merchant processing business to a joint venture, reduced support provided to cash funds and lower write-downs on legacy assets offset by negative credit valuation adjustments recorded on Merrill Lynch structured notes of \$4.9 billion.
- Net impairment losses recognized in earnings on available-for-sale (AFS) debt securities decreased \$625 million driven by lower collateralized debt obligation (CDO) related impairment losses partially offset by higher impairment losses on non-agency CMOs.

### Provision for Credit Losses

The provision for credit losses increased \$21.7 billion to \$48.6 billion for 2009 compared to 2008.

The consumer portion of the provision for credit losses increased \$15.1 billion to \$36.9 billion for 2009 compared to 2008. The increase was driven by higher net charge-offs in our consumer real estate, consumer credit card and consumer lending portfolios reflecting deterioration in the economy and housing markets. In addition to higher net charge-offs, the provision increase was also driven by higher reserve additions for deterioration in the purchased impaired and residential mortgage portfolios, new draws on previously securitized accounts as well as an approximate \$800 million addition to increase the reserve coverage to approximately 12 months of charge-offs in consumer credit card. These increases were partially offset by lower reserve additions in our unsecured domestic consumer lending portfolios resulting from improved delinquencies and in the home equity portfolio due to the slowdown in the pace of deterioration. In the Countrywide and Merrill Lynch consumer purchased impaired portfolios, the additions to reserves to reflect further reductions in expected principal cash flows were \$3.5 billion in 2009 compared to \$750 million in 2008. The increase was primarily related to the home equity purchased impaired portfolio.

The commercial portion of the provision for credit losses including the provision for unfunded lending commitments increased \$6.7 billion to \$11.7 billion for 2009 compared to 2008. The increase was driven by higher net charge-offs and higher additions to the reserves in the commercial real estate and commercial – domestic portfolios reflecting deterioration across a broad range of property types, industries and borrowers. These increases were partially offset by lower reserve additions in the small business portfolio due to improved delinquencies.

Net charge-offs totaled \$33.7 billion, or 3.58 percent of average loans and leases for 2009 compared with \$16.2 billion, or 1.79 percent for 2008. The increased level of net charge-offs is a result of the same factors noted above.



## Noninterest Expense

**Table 4 Noninterest Expense**

(Dollars in millions)	2009	2008
Personnel	\$31,528	\$18,371
Occupancy	4,906	3,626
Equipment	2,455	1,655
Marketing	1,933	2,368
Professional fees	2,281	1,592
Amortization of intangibles	1,978	1,834
Data processing	2,500	2,546
Telecommunications	1,420	1,106
Other general operating	14,991	7,496
Merger and restructuring charges	2,721	935
<b>Total noninterest expense</b>	<b>\$66,713</b>	<b>\$41,529</b>

Noninterest expense increased \$25.2 billion to \$66.7 billion for 2009 compared to 2008. Personnel costs and other general operating expenses rose due to the addition of Merrill Lynch and the full-year impact of Countrywide. Personnel expense rose due to increased revenue and the impacts of Merrill Lynch and Countrywide partially offset by a change in compensation that delivers a greater portion of incentive pay over time. Additionally, noninterest expense increased due to higher litigation costs compared to the prior year, a \$425 million pre-tax charge to pay the U.S. government to terminate its asset guarantee term sheet and higher FDIC insurance costs including a \$724 million special assessment in 2009.

## Income Tax Expense

Income tax benefit was \$1.9 billion for 2009 compared to expense of \$420 million for 2008 and resulted in an effective tax rate of (44.0) percent compared to 9.5 percent in the prior year. The change in the effective tax rate from the prior year was due to increased permanent tax preference items as well as a shift in the geographic mix of our earnings driven by the addition of Merrill Lynch. Significant permanent tax preference items for 2009 included the reversal of part of a valuation allowance provided for acquired capital loss carryforward tax benefits, annually recurring tax-exempt income and tax credits, a loss on certain foreign subsidiary stock and the effect of audit settlements.

We acquired with Merrill Lynch a deferred tax asset related to a federal capital loss carryforward against which a valuation allowance was recorded at the date of acquisition. In 2009, we recognized substantial capital gains, against which a portion of the capital loss carryforward was utilized.

The income of certain foreign subsidiaries has not been subject to U.S. income tax as a result of long-standing deferral provisions applicable to active finance income. These provisions expired for taxable years beginning on or after January 1, 2010. On December 9, 2009, the U.S. House of Representatives passed a bill that would have extended these provisions as well as certain other expiring tax provisions through December 31, 2010. Absent an extension of these provisions, this active financing income earned by foreign subsidiaries after January 1, 2010 will generally be subject to a tax provision that considers the incremental U.S. income tax. The impact of the expiration of these provisions would depend upon the amount, composition and geographic mix of our future earnings and could increase our annual income tax expense by up to \$1.0 billion. For more information on income tax expense, see *Note 19 – Income Taxes* to the Consolidated Financial Statements.

## Balance Sheet Analysis

**Table 5 Selected Balance Sheet Data**

	December 31		Average Balance	
	2009	2008	2009	2008
(Dollars in millions)				
<b>Assets</b>				
Federal funds sold and securities borrowed or purchased under agreements to resell	\$ 189,933	\$ 82,478	\$ 235,764	\$ 128,053
Trading account assets	182,206	134,315	217,048	186,579
Debt securities	311,441	277,589	271,048	250,551
Loans and leases	900,128	931,446	948,805	910,878
All other assets <sup>(1)</sup>	639,591	392,115	764,852	367,918
<b>Total assets</b>	<b>\$ 2,223,299</b>	<b>\$ 1,817,943</b>	<b>\$ 2,437,517</b>	<b>\$ 1,843,979</b>
<b>Liabilities</b>				
Deposits	\$ 991,611	\$ 882,997	\$ 980,966	\$ 831,144
Federal funds purchased and securities loaned or sold under agreements to repurchase	255,185	206,598	369,863	272,981
Trading account liabilities	65,432	51,723	72,207	72,915
Commercial paper and other short-term borrowings	69,524	158,056	118,781	182,729
Long-term debt	438,521	268,292	446,634	231,235
All other liabilities	171,582	73,225	204,421	88,144
<b>Total liabilities</b>	<b>1,991,855</b>	<b>1,640,891</b>	<b>2,192,872</b>	<b>1,679,148</b>
<b>Shareholders' equity</b>	<b>231,444</b>	<b>177,052</b>	<b>244,645</b>	<b>164,831</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$ 2,223,299</b>	<b>\$ 1,817,943</b>	<b>\$ 2,437,517</b>	<b>\$ 1,843,979</b>

<sup>(1)</sup>All other assets are presented net of allowance for loan and lease losses for the year-end and average balances.

At December 31, 2009, total assets were \$2.2 trillion, an increase of \$405.4 billion, or 22 percent, from December 31, 2008. Average total assets in 2009 increased \$593.5 billion, or 32 percent, from 2008. The increases in year-end and average total assets were primarily attributable to the acquisition of Merrill Lynch, which impacted virtually all categories, but particularly federal funds sold and securities borrowed or purchased under agreements to resell, trading account assets, and debt securities. Cash and cash equivalents, which are included in all other assets in the table above, increased due to our strengthened liquidity and capital position. Partially offsetting these increases was a decrease in year-end loans and leases primarily attributable to customer payments, reduced demand and charge-offs.

At December 31, 2009, total liabilities were \$2.0 trillion, an increase of \$351.0 billion, or 21 percent, from December 31, 2008. Average total liabilities for 2009 increased \$513.7 billion, or 31 percent, from 2008. The increases in year-end and average total liabilities were attributable to the acquisition of Merrill Lynch which impacted virtually all categories, but particularly federal funds purchased and securities loaned or sold under agreements to repurchase, long-term debt and other liabilities. In addition to the impact of Merrill Lynch, deposits increased as we benefited from higher savings and movement into more liquid products due to the low rate environment. Partially offsetting these increases was a decrease in commercial paper and other short-term borrowings due in part to lower Federal Home Loan Bank (FHLB) borrowings.

### Federal Funds Sold and Securities Borrowed or Purchased Under Agreements to Resell

Federal funds transactions involve lending reserve balances on a short-term basis. Securities borrowed and securities purchased under agreements to resell are utilized to accommodate customer transactions, earn interest rate spreads and obtain securities for settlement. Year-end and average federal funds sold and securities borrowed or purchased under agreements to resell increased \$107.5 billion and \$107.7 billion in 2009, attributable primarily to the acquisition of Merrill Lynch.

### Trading Account Assets

Trading account assets consist primarily of fixed income securities (including government and corporate debt), equity and convertible instruments. Year-end and average trading account assets increased \$47.9 billion and \$30.5 billion in 2009, attributable primarily to the acquisition of Merrill Lynch.

### Debt Securities

Debt securities include U.S. Treasury and agency securities, MBS, principally agency MBS, foreign bonds, corporate bonds and municipal debt. We use the debt securities portfolio primarily to manage interest rate and liquidity risk and to take advantage of market conditions that create more economically attractive returns on these investments. The year-end and average balances of debt securities increased \$33.9 billion and \$20.5 billion from 2008 due to net purchases of securities and the impact of the acquisition of Merrill Lynch. For additional information on our AFS debt securities, see Market Risk Management – Securities beginning on page 84 and Note 5 – Securities to the Consolidated Financial Statements.

### Loans and Leases

Year-end loans and leases decreased \$31.3 billion to \$900.1 billion in 2009 compared to 2008 primarily due to lower commercial loans as the result of customer payments and reduced demand, lower customer merger and acquisition activity, and net charge-offs, partially offset by the addition of Merrill Lynch. Average loans and leases increased \$37.9 billion to \$948.8 billion in 2009 compared to 2008 primarily due to the addition of Merrill Lynch, and the full-year impact of Countrywide. The average consumer loan portfolio increased \$24.4 billion due to the addition of Merrill Lynch domestic and foreign securities-based lending margin loans, Merrill Lynch consumer real estate balances, and the full-year impact of Countrywide, partially offset by lower balance sheet retention, sales and conversions of residential mortgages into retained MBS and net charge-offs. The average commercial loan and lease portfolio increased \$13.5 billion primarily due to the acquisition of Merrill Lynch. For a more detailed discussion of the loan portfolio, see Credit Risk Management beginning on page 54, and Note 6 – Outstanding Loans and Leases to the Consolidated Financial Statements.

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### **All Other Assets**

Year-end and average all other assets increased \$247.5 billion and \$396.9 billion at December 31, 2009 driven primarily by the acquisition of Merrill Lynch, which impacted various line items, including derivative assets. In addition, the increase was driven by higher cash and cash equivalents due to our strengthened liquidity and capital position.

### **Deposits**

Year-end and average deposits increased \$108.6 billion to \$991.6 billion and \$149.8 billion to \$981.0 billion in 2009 compared to 2008. The increases were in domestic interest-bearing deposits and noninterest-bearing deposits. Partially offsetting these increases was a decrease in foreign interest-bearing deposits. We categorize our deposits as core and market-based deposits. Core deposits exclude negotiable CDs, public funds, other domestic time deposits and foreign interest-bearing deposits. Average core deposits increased \$164.4 billion, or 24 percent, to \$861.3 billion in 2009 compared to 2008. The increase was attributable to growth in our average NOW and money market accounts and IRAs and noninterest-bearing deposits due to higher savings, the consumer flight-to-safety and movement into more liquid products due to the low rate environment. Average market-based deposit funding decreased \$14.6 billion to \$119.7 billion in 2009 compared to 2008 due primarily to a decrease in deposits in banks located in foreign countries.

### **Federal Funds Purchased and Securities Loaned or Sold Under Agreements to Repurchase**

Federal funds transactions involve borrowing reserve balances on a short-term basis. Securities loaned and securities sold under agreements to repurchase are collateralized financing transactions utilized to accommodate customer transactions, earn interest rate spreads and finance inventory positions. Year-end and average federal funds purchased and securities loaned or sold under agreements to repurchase increased \$48.6 billion and \$96.9 billion primarily due to the Merrill Lynch acquisition.

### **Trading Account Liabilities**

Trading account liabilities consist primarily of short positions in fixed income securities (including government and corporate debt), equity and

convertible instruments. Year-end trading account liabilities increased \$13.7 billion in 2009, attributable primarily to increases in equity securities and foreign sovereign debt.

### **Commercial Paper and Other Short-term Borrowings**

Commercial paper and other short-term borrowings provide a funding source to supplement deposits in our ALM strategy. Year-end and average commercial paper and other short-term borrowings decreased \$88.5 billion to \$69.5 billion and \$63.9 billion to \$118.8 billion in 2009 compared to 2008 due, in part, to lower FHLB balances as a result of our strong liquidity position.

### **Long-term Debt**

Year-end and average long-term debt increased \$170.2 billion to \$438.5 billion and \$215.4 billion to \$446.6 billion in 2009 compared to 2008. The increases were attributable to issuances and the addition of long-term debt associated with the Merrill Lynch acquisition. For additional information on long-term debt, see *Note 13 – Long-term Debt* to the Consolidated Financial Statements.

### **All Other Liabilities**

Year-end and average all other liabilities increased \$98.4 billion and \$116.3 billion at December 31, 2009 driven primarily by the acquisition of Merrill Lynch, which impacted various line items, including derivative liabilities.

### **Shareholders' Equity**

Year-end and average shareholders' equity increased \$54.4 billion and \$79.8 billion due to a common stock offering of \$13.5 billion, \$29.1 billion of common and preferred stock issued in connection with the Merrill Lynch acquisition, the issuance of CES of \$19.2 billion, an increase in accumulated other comprehensive income (OCI) and net income. These increases were partially offset by repayment of TARP Preferred Stock of \$45.0 billion, \$30.0 billion of which was issued in early 2009, and higher preferred stock dividend payments. The increase in accumulated OCI was due to unrealized gains on AFS debt and marketable equity securities. Average shareholders' equity was also impacted by the issuance of preferred stock and common stock warrants of \$30.0 billion in early 2009. This preferred stock was part of the TARP repayment in December 2009.

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**Table 6 Five Year Summary of Selected Financial Data**

(Dollars in millions, except per share information)

	2009	2008	2007	2006	2005
<b>Income statement</b>					
Net interest income	\$ 47,109	\$ 45,360	\$ 34,441	\$ 34,594	\$ 30,737
Noninterest income	72,534	27,422	32,392	38,182	26,438
Total revenue, net of interest expense	119,643	72,782	66,833	72,776	57,175
Provision for credit losses	48,570	26,825	8,385	5,010	4,014
Noninterest expense, before merger and restructuring charges	63,992	40,594	37,114	34,988	28,269
Merger and restructuring charges	2,721	935	410	805	412
Income before income taxes	4,360	4,428	20,924	31,973	24,480
Income tax expense (benefit)	(1,916)	420	5,942	10,840	8,015
Net income	6,276	4,008	14,982	21,133	16,465
Net income (loss) applicable to common shareholders	(2,204)	2,556	14,800	21,111	16,447
Average common shares issued and outstanding (in thousands)	7,728,570	4,592,085	4,423,579	4,526,637	4,008,688
Average diluted common shares issued and outstanding (in thousands)	7,728,570	4,596,428	4,463,213	4,580,558	4,060,358
<b>Performance ratios</b>					
Return on average assets	0.26%	0.22%	0.94%	1.44%	1.30%
Return on average common shareholders' equity	n/m	1.80	11.08	16.27	16.51
Return on average tangible common shareholders' equity <sup>(1)</sup>	n/m	4.72	26.19	38.23	31.80
Return on average tangible shareholders' equity <sup>(1)</sup>	4.18	5.19	25.13	37.80	31.67
Total ending equity to total ending assets	10.41	9.74	8.56	9.27	7.86
Total average equity to total average assets	10.04	8.94	8.53	8.90	7.86
Dividend payout	n/m	n/m	72.26	45.66	46.61
<b>Per common share data</b>					
Earnings (loss)	\$ (0.29)	\$ 0.54	\$ 3.32	\$ 4.63	\$ 4.08
Diluted earnings (loss)	(0.29)	0.54	3.29	4.58	4.02
Dividends paid	0.04	2.24	2.40	2.12	1.90
Book value	21.48	27.77	32.09	29.70	25.32
Tangible book value <sup>(1)</sup>	11.94	10.11	12.71	13.26	13.51
<b>Market price per share of common stock</b>					
Closing	\$ 15.06	\$ 14.08	\$ 41.26	\$ 53.39	\$ 46.15
High closing	18.59	45.03	54.05	54.90	47.08
Low closing	3.14	11.25	41.10	43.09	41.57
<b>Market capitalization</b>	<b>\$ 130,273</b>	<b>\$ 70,645</b>	<b>\$ 183,107</b>	<b>\$ 238,021</b>	<b>\$ 184,586</b>
<b>Average balance sheet</b>					
Total loans and leases	\$ 948,805	\$ 910,878	\$ 776,154	\$ 652,417	\$ 537,218
Total assets	2,437,517	1,843,979	1,602,073	1,466,681	1,269,892
Total deposits	980,966	831,144	717,182	672,995	632,432
Long-term debt	446,634	231,235	169,855	130,124	97,709
Common shareholders' equity	182,288	141,638	133,555	129,773	99,590
Total shareholders' equity	244,645	164,831	136,662	130,463	99,861
<b>Asset quality <sup>(2)</sup></b>					
Allowance for credit losses <sup>(3)</sup>	\$ 38,687	\$ 23,492	\$ 12,106	\$ 9,413	\$ 8,440
Nonperforming loans, leases and foreclosed properties <sup>(4)</sup>	35,747	18,212	5,948	1,856	1,603
Allowance for loan and lease losses as a percentage of total loans and leases outstanding <sup>(4)</sup>	4.16%	2.49%	1.33%	1.28%	1.40%
Allowance for loan and lease losses as a percentage of total nonperforming loans and leases <sup>(4)</sup>	111	141	207	505	532
Net charge-offs	\$ 33,688	\$ 16,231	\$ 6,480	\$ 4,539	\$ 4,562
Net charge-offs as a percentage of average loans and leases outstanding <sup>(4)</sup>	3.58%	1.79%	0.84%	0.70%	0.85%
Nonperforming loans and leases as a percentage of total loans and leases outstanding <sup>(4)</sup>	3.75	1.77	0.64	0.25	0.26
Nonperforming loans, leases and foreclosed properties as a percentage of total loans, leases and foreclosed properties <sup>(4)</sup>	3.98	1.96	0.68	0.26	0.28
Ratio of the allowance for loan and lease losses at December 31 to net charge-offs	1.10	1.42	1.79	1.99	1.76
<b>Capital ratios (year end)</b>					
Risk-based capital:					
Tier 1 common	7.81%	4.80%	4.93%	6.82%	6.80%
Tier 1	10.40	9.15	6.87	8.64	8.25
Total	14.66	13.00	11.02	11.88	11.08
Tier 1 leverage	6.91	6.44	5.04	6.36	5.91
Tangible equity <sup>(1)</sup>	6.42	5.11	3.73	4.47	4.36
Tangible common equity <sup>(1)</sup>	5.57	2.93	3.46	4.27	4.34

<sup>(1)</sup>Tangible equity ratios and tangible book value per share of common stock are non-GAAP measures. Other companies may define or calculate these measures differently. For additional information on these ratios and a corresponding reconciliation to GAAP financial measures, see Supplemental Financial Data beginning on page 25.

<sup>(2)</sup>For more information on the impact of the purchased impaired loan portfolio on asset quality, see Consumer Portfolio Credit Risk Management beginning on page 54 and Commercial Portfolio Credit Risk Management beginning on page 64.

<sup>(3)</sup>Includes the allowance for loan and lease losses and the reserve for unfunded lending commitments.

<sup>(4)</sup>Balances and ratios do not include loans accounted for under the fair value option.

n/m= not meaningful

## Supplemental Financial Data

Table 7 provides a reconciliation of the supplemental financial data mentioned below with financial measures defined by generally accepted accounting principles in the United States of America (GAAP). Other companies may define or calculate supplemental financial data differently.

We view net interest income and related ratios and analyses (i.e., efficiency ratio and net interest yield) on a FTE basis. Although this is a non-GAAP measure, we believe managing the business with net interest income on a FTE basis provides a more accurate picture of the interest margin for comparative purposes. To derive the FTE basis, net interest income is adjusted to reflect tax-exempt income on an equivalent before-tax basis with a corresponding increase in income tax expense. For purposes of this calculation, we use the federal statutory tax rate of 35 percent. This measure ensures comparability of net interest income arising from taxable and tax-exempt sources.

As mentioned above, certain performance measures including the efficiency ratio and net interest yield utilize net interest income (and thus total revenue) on a FTE basis. The efficiency ratio measures the costs expended to generate a dollar of revenue, and net interest yield evaluates how many bps we are earning over the cost of funds. During our annual planning process, we set efficiency targets for the Corporation and each line of business. We believe the use of this non-GAAP measure provides additional clarity in assessing our results. Targets vary by year and by business, and are based on a variety of factors including maturity of the business, competitive environment, market factors, and other items (e.g., risk appetite).

We also evaluate our business based upon ratios that utilize tangible equity. Return on average tangible common shareholders' equity measures our earnings contribution as a percentage of common shareholders' equity plus CES less goodwill and intangible assets (excluding MSRs), net of related deferred tax liabilities. Return on average tangible shareholders' equity (ROTE) measures our earnings contribution as a percentage of average shareholders' equity reduced by goodwill and intangible assets (excluding MSRs), net of related deferred tax liabilities. The tangible common equity ratio represents common shareholders' equity plus CES less goodwill and intangible assets (excluding MSRs), net of related deferred tax liabilities divided by total assets less goodwill and intangible assets (excluding MSRs), net of related deferred tax liabilities. The tangible equity ratio represents total shareholders' equity less goodwill and intangible assets (excluding MSRs), net of related deferred tax liabilities divided by total assets less goodwill and intangible assets (excluding MSRs), net of related deferred tax liabilities. Tangible book value per common share represents ending common shareholders' equity plus CES less goodwill and intangible assets (excluding MSRs), net of related deferred tax liabilities divided by ending common shares outstanding plus the number of common shares issued upon conversion of CES. These measures are used to evaluate our use of equity (i.e., capital). In addition, profitability, relationship, and investment models all use ROTe as key measures to support our overall growth goals.

The aforementioned performance measures and ratios are presented in Table 6.

**Table 7 Supplemental Financial Data and Reconciliations to GAAP Financial Measures**

(Dollars in millions, shares in thousands)

	2009	2008	2007	2006	2005
<b>FTE basis data</b>					
Net interest income	\$ 48,410	\$ 46,554	\$ 36,190	\$ 35,818	\$ 31,569
Total revenue, net of interest expense	120,944	73,976	68,582	74,000	58,007
Net interest yield	2.65%	2.98%	2.60%	2.82%	2.84%
Efficiency ratio	55.16	56.14	54.71	48.37	49.44
<b>Reconciliation of average common shareholders' equity to average tangible common shareholders' equity</b>					
Common shareholders' equity	\$ 182,288	\$ 141,638	\$ 133,555	\$ 129,773	\$ 99,590
Common Equivalent Securities	1,213	—	—	—	—
Goodwill	(86,034)	(79,827)	(69,333)	(66,040)	(45,331)
Intangible assets (excluding MSRs)	(12,220)	(9,502)	(9,566)	(10,324)	(3,548)
Related deferred tax liabilities	3,831	1,782	1,845	1,809	1,014
Tangible common shareholders' equity	\$ 89,078	\$ 54,091	\$ 56,501	\$ 55,218	\$ 51,725
<b>Reconciliation of average shareholders' equity to average tangible shareholders' equity</b>					
Shareholders' equity	\$ 244,645	\$ 164,831	\$ 136,662	\$ 130,463	\$ 99,861
Goodwill	(86,034)	(79,827)	(69,333)	(66,040)	(45,331)
Intangible assets (excluding MSRs)	(12,220)	(9,502)	(9,566)	(10,324)	(3,548)
Related deferred tax liabilities	3,831	1,782	1,845	1,809	1,014
Tangible shareholders' equity	\$ 150,222	\$ 77,284	\$ 59,608	\$ 55,908	\$ 51,996
<b>Reconciliation of year end common shareholders' equity to year end tangible common shareholders' equity</b>					
Common shareholders' equity	\$ 194,236	\$ 139,351	\$ 142,394	\$ 132,421	\$ 101,262
Common Equivalent Securities	19,244	—	—	—	—
Goodwill	(86,314)	(81,934)	(77,530)	(65,662)	(45,354)
Intangible assets (excluding MSRs)	(12,026)	(8,535)	(10,296)	(9,422)	(3,194)
Related deferred tax liabilities	3,498	1,854	1,855	1,799	1,336
Tangible common shareholders' equity	\$ 118,638	\$ 50,736	\$ 56,423	\$ 59,136	\$ 54,050
<b>Reconciliation of year end shareholders' equity to year end tangible shareholders' equity</b>					
Shareholders' equity	\$ 231,444	\$ 177,052	\$ 146,803	\$ 135,272	\$ 101,533
Goodwill	(86,314)	(81,934)	(77,530)	(65,662)	(45,354)
Intangible assets (excluding MSRs)	(12,026)	(8,535)	(10,296)	(9,422)	(3,194)
Related deferred tax liabilities	3,498	1,854	1,855	1,799	1,336
Tangible shareholders' equity	\$ 136,602	\$ 88,437	\$ 60,832	\$ 61,987	\$ 54,321
<b>Reconciliation of year end assets to year end tangible assets</b>					
Assets	\$2,223,299	\$1,817,943	\$1,715,746	\$1,459,737	\$1,291,803
Goodwill	(86,314)	(81,934)	(77,530)	(65,662)	(45,354)
Intangible assets (excluding MSRs)	(12,026)	(8,535)	(10,296)	(9,422)	(3,194)
Related deferred tax liabilities	3,498	1,854	1,855	1,799	1,336
Tangible assets	\$2,128,457	\$1,729,328	\$1,629,775	\$1,386,452	\$1,244,591
<b>Reconciliation of year end common shares outstanding to year end tangible common shares outstanding</b>					
Common shares outstanding	8,650,244	5,017,436	4,437,885	4,458,151	3,999,688
Assumed conversion of common equivalent shares	1,286,000	—	—	—	—
Tangible common shares outstanding	9,936,244	5,017,436	4,437,885	4,458,151	3,999,688

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### Core Net Interest Income – Managed Basis

We manage core net interest income – managed basis, which adjusts reported net interest income on a FTE basis for the impact of market-based activities and certain securitizations, net of retained securities. As discussed in the *Global Markets* business segment section beginning on page 35, we evaluate our market-based results and strategies on a total market-based revenue approach by combining net interest income and noninterest income for *Global Markets*. We also adjust for loans that we originated and subsequently sold into credit card securitizations. Noninterest income, rather than net interest income and provision for credit losses, is recorded for assets that have been securitized as we are compensated for servicing the securitized assets and record servicing income and gains or losses on securitizations, where appropriate. We believe the use of this non-GAAP presentation provides additional clarity in managing our results. An analysis of core net interest income – managed basis, core average earning assets – managed basis and core net interest yield on earning assets – managed basis, which adjust for the impact of these two non-core items from reported net interest income on a FTE basis, is shown below.

Core net interest income on a managed basis increased \$2.3 billion to \$52.8 billion for 2009 compared to 2008. The increase was driven by the favorable interest rate environment and the acquisitions of Merrill Lynch and Countrywide. These items were partially offset by the impact of deleveraging the ALM portfolio earlier in 2009, lower consumer loan levels and the adverse impact of our nonperforming loans. For more information on our nonperforming loans, see Credit Risk Management on page 54.

On a managed basis, core average earning assets increased \$130.1 billion to \$1.4 trillion for 2009 compared to 2008 primarily due to the acquisitions of Merrill Lynch and Countrywide partially offset by lower loan levels and earlier deleveraging of the AFS debt securities portfolio.

Core net interest yield on a managed basis decreased 19 bps to 3.69 percent for 2009 compared to 2008, primarily due to the addition of lower yielding assets from the Merrill Lynch and Countrywide acquisitions, reduced consumer loan levels and the impact of deleveraging the ALM portfolio earlier in 2009 partially offset by the favorable interest rate environment.

**Table 8 Core Net Interest Income – Managed Basis**

(Dollars in millions)	2009	2008
<b>Net interest income <sup>(1)</sup></b>		
As reported	\$ 48,410	\$ 46,554
Impact of market-based net interest income <sup>(2)</sup>	(6,119)	(4,939)
Core net interest income	42,291	41,615
Impact of securitizations <sup>(3)</sup>	10,524	8,910
<b>Core net interest income – managed basis</b>	<b>\$ 52,815</b>	<b>\$ 50,525</b>
<b>Average earning assets</b>		
As reported	\$1,830,193	\$1,562,729
Impact of market-based earning assets <sup>(2)</sup>	(481,542)	(360,667)
Core average earning assets	1,348,651	1,202,062
Impact of securitizations <sup>(4)</sup>	83,640	100,145
<b>Core average earning assets – managed basis</b>	<b>\$1,432,291</b>	<b>\$1,302,207</b>
<b>Net interest yield contribution <sup>(1)</sup></b>		
As reported	2.65%	2.98%
Impact of market-based activities <sup>(2)</sup>	0.49	0.48
Core net interest yield on earning assets	3.14	3.46
Impact of securitizations	0.55	0.42
<b>Core net interest yield on earning assets – managed basis</b>	<b>3.69%</b>	<b>3.88%</b>

<sup>(1)</sup>FTE basis

<sup>(2)</sup>Represents the impact of market-based amounts included in *Global Markets*.

<sup>(3)</sup>Represents the impact of securitizations utilizing actual bond costs. This is different from the business segment view which utilizes funds transfer pricing methodologies.

<sup>(4)</sup>Represents average securitized loans less accrued interest receivable and certain securitized bonds retained.

## Business Segment Operations

### Segment Description and Basis of Presentation

We report the results of our operations through six business segments: *Deposits, Global Card Services, Home Loans & Insurance, Global Banking, Global Markets* and *GWIM*, with the remaining operations recorded in *All Other*. The Corporation may periodically reclassify business segment results based on modifications to its management reporting methodologies and changes in organizational alignment. Prior period amounts have been reclassified to conform to current period presentation.

We prepare and evaluate segment results using certain non-GAAP methodologies and performance measures, many of which are discussed in Supplemental Financial Data beginning on page 25. We begin by evaluating the operating results of the segments which by definition exclude merger and restructuring charges. The segment results also reflect certain revenue and expense methodologies which are utilized to determine

net income. The net interest income of the business segments includes the results of a funds transfer pricing process that matches assets and liabilities with similar interest rate sensitivity and maturity characteristics.

Equity is allocated to business segments and related businesses using a risk-adjusted methodology incorporating each segment's stand-alone credit, market, interest rate and operational risk components. The nature of these risks is discussed further beginning on page 44. The Corporation benefits from the diversification of risk across these components which is reflected as a reduction to allocated equity for each segment. Average equity is allocated to the business segments and is affected by the portion of goodwill that is specifically assigned to them.

For more information on our basis of presentation, selected financial information for the business segments and reconciliations to consolidated total revenue, net income and year-end total assets, see *Note 23 – Business Segment Information* to the Consolidated Financial Statements.

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### Deposits

(Dollars in millions)	2009	2008
Net interest income <sup>(1)</sup>	\$ 7,160	\$ 10,970
Noninterest income:		
Service charges	6,802	6,801
All other income	46	69
Total noninterest income	6,848	6,870
Total revenue, net of interest expense	14,008	17,840
Provision for credit losses	380	399
Noninterest expense	9,693	8,783
Income before income taxes	3,935	8,658
Income tax expense <sup>(1)</sup>	1,429	3,146
<b>Net income</b>	<b>\$ 2,506</b>	<b>\$ 5,512</b>
Net interest yield <sup>(1)</sup>	1.77%	3.13%
Return on average equity	10.55	22.55
Efficiency ratio <sup>(1)</sup>	69.19	49.23

### Balance Sheet

Average		
Total earning assets <sup>(2)</sup>	\$405,563	\$349,930
Total assets <sup>(2)</sup>	432,268	379,067
Total deposits	406,833	357,608
Allocated equity	23,756	24,445
<b>Year end</b>		
Total earning assets <sup>(2)</sup>	\$418,156	\$363,334
Total assets <sup>(2)</sup>	445,363	390,487
Total deposits	419,583	375,763

<sup>(1)</sup>FTE basis

<sup>(2)</sup>Total earning assets and total assets include asset allocations to match liabilities (i.e., deposits).

*Deposits* includes the results of consumer deposit activities which consist of a comprehensive range of products provided to consumers and small businesses. In addition, *Deposits* includes our student lending results and an allocation of ALM activities. In the U.S., we serve approximately 59 million consumer and small business relationships through a franchise that stretches coast to coast through 32 states and the District of Columbia utilizing our network of 6,011 banking centers, 18,262 domestic-branded ATMs, telephone, online and mobile banking channels.

Our deposit products include traditional savings accounts, money market savings accounts, CDs and IRAs, and noninterest- and interest-bearing checking accounts. Deposit products provide a relatively stable source of funding and liquidity. We earn net interest spread revenues from investing this liquidity in earning assets through client-facing lending and ALM activities. The revenue is allocated to the deposit products using our funds transfer pricing process which takes into account the interest rates and maturity characteristics of the deposits. Deposits also generate fees such as account service fees, non-sufficient funds fees, overdraft charges and ATM fees.

During the third quarter of 2009, we announced changes in our overdraft fee policies intended to help customers limit overdraft fees. These changes negatively impacted net revenue beginning in the fourth quarter of 2009. In addition, in November 2009, the Federal Reserve issued Regulation E which will negatively impact future service charge revenue in *Deposits*. For more information on Regulation E, see Regulatory Overview beginning on page 17.

During 2009, our active online banking customer base grew to 29.6 million subscribers, a net increase of 1.3 million subscribers from December 31, 2008 reflecting our continued focus on increasing the use of alternative banking channels. In addition, our active bill pay users paid \$302.4 billion of bills online during 2009 compared to \$301.1 billion during 2008.

*Deposits* includes the net impact of migrating customers and their related deposit balances between *GWIM* and *Deposits*. During 2009, total deposits of \$43.4 billion were migrated to *Deposits* from *GWIM*. Conversely, \$20.5 billion of deposits were migrated from *Deposits* to *GWIM* during 2008. The directional shift was mainly due to client segmentation threshold changes resulting from the Merrill Lynch acquisition, partially offset by the acceleration in 2008 of movement of clients into *GWIM* as part of our growth initiatives for our more affluent customers. As of the date of migration, the associated net interest income, service charges and noninterest expense are recorded in the segment to which deposits were transferred.

Net income fell \$3.0 billion, or 55 percent, to \$2.5 billion as net revenue declined and noninterest expense rose. Net interest income decreased \$3.8 billion, or 35 percent, to \$7.2 billion as a result of a lower net interest income allocation from ALM activities and spread compression as interest rates declined. Average deposits grew \$49.2 billion, or 14 percent, due to strong organic growth and the net migration of certain households' deposits from *GWIM*. Organic growth was driven by the continuing need of customers to manage their liquidity as illustrated by growth in higher spread deposits from new money as well as movement from certificates of deposits to checking accounts and other products. This increase was partially offset by the expected decline in higher-yielding Countrywide deposits.

Noninterest income was flat at \$6.8 billion as service charges remained unchanged for the year. The positive impacts of revenue initiatives were offset by changes in consumer spending behavior attributable to current economic conditions, as well as the negative impact of the implementation in the fourth quarter of 2009 of the new initiatives aimed at assisting customers who are economically stressed by reducing their banking fees.

Noninterest expense increased \$910 million, or 10 percent, due to higher FDIC insurance and special assessment costs, partially offset by lower operating costs related to lower transaction volume due to the economy and productivity initiatives.



## Global Card Services

(Dollars in millions)	2009	2008
Net interest income <sup>(1)</sup>	\$ 20,264	\$ 19,589
Noninterest income:		
Card income	8,555	10,033
All other income	523	1,598
Total noninterest income	9,078	11,631
Total revenue, net of interest expense	29,342	31,220
Provision for credit losses <sup>(2)</sup>	30,081	20,164
Noninterest expense	7,961	9,160
Income (loss) before income taxes	(8,700)	1,896
Income tax expense (benefit) <sup>(1)</sup>	(3,145)	662
<b>Net income (loss)</b>	<b>\$ (5,555)</b>	<b>\$ 1,234</b>
Net interest yield <sup>(1)</sup>	9.36%	8.26%
Return on average equity	n/m	3.15
Efficiency ratio <sup>(1)</sup>	27.13	29.34

### Balance Sheet

Average		
Total loans and leases	\$216,654	\$236,714
Total earning assets	216,410	237,025
Total assets	232,643	258,710
Allocated equity	41,409	39,186
<b>Year end</b>		
Total loans and leases	\$201,230	\$233,040
Total earning assets	200,988	233,094
Total assets	217,139	252,683

<sup>(1)</sup>FTE basis

<sup>(2)</sup>Represents provision for credit losses on held loans combined with realized credit losses associated with the securitized loan portfolio.

n/m= not meaningful

*Global Card Services* provides a broad offering of products, including U.S. consumer and business card, consumer lending, international card and debit card to consumers and small businesses. We provide credit card products to customers in the U.S., Canada, Ireland, Spain and the United Kingdom. We offer a variety of co-branded and affinity credit and debit card products and are one of the leading issuers of credit cards through endorsed marketing in the U.S. and Europe. On May 22, 2009, the CARD Act which calls for a number of changes to credit card industry practices was signed into law. The provisions in the CARD Act are expected to negatively impact net interest income due to the restrictions on our ability to reprice credit cards based on risk, and card income due to restrictions imposed on certain fees. For more information on the CARD Act, see Regulatory Overview beginning on page 17.

The Corporation reports its *Global Card Services* results on a managed basis which is consistent with the way that management evaluates the results of the business. Managed basis assumes that securitized loans were not sold and presents earnings on these loans in a manner similar to the way loans that have not been sold (i.e., held loans) are

presented. Loan securitization is an alternative funding process that is used by the Corporation to diversify funding sources. Loan securitization removes loans from the Consolidated Balance Sheet through the sale of loans to an off-balance sheet qualifying special purpose entity (QSPE).

Securitized loans continue to be serviced by the business and are subject to the same underwriting standards and ongoing monitoring as held loans. In addition, excess servicing income is exposed to similar credit risk and repricing of interest rates as held loans. Starting late in the third quarter of 2008 and continuing into the first quarter of 2009, liquidity for asset-backed securitizations became disrupted and spreads rose to historic highs which negatively impacted our credit card securitization programs. Beginning in the second quarter of 2009, conditions started to improve with spreads narrowing and liquidity returning to the marketplace, however, we did not return to the credit card securitization market during 2009. For more information, see the Liquidity Risk and Capital Management discussion beginning on page 47.

*Global Card Services* recorded a net loss of \$5.6 billion in 2009 compared to net income of \$1.2 billion in 2008 due to higher provision for credit losses as credit costs continued to rise driven by weak economies in the U.S., Europe and Canada. Managed net revenue declined \$1.9 billion to \$29.3 billion in 2009 driven by lower noninterest income partially offset by growth in net interest income.

Net interest income grew to \$20.3 billion in 2009 from \$19.6 billion in 2008 driven by increased loan spreads due to the beneficial impact of lower short-term interest rates on our funding costs partially offset by a decrease in average managed loans of \$20.1 billion, or eight percent.

Noninterest income decreased \$2.6 billion, or 22 percent, to \$9.1 billion driven by decreases in card income of \$1.5 billion, or 15 percent, and all other income of \$1.1 billion, or 67 percent. The decrease in card income resulted from lower cash advances primarily related to balance transfers, and lower credit card interchange and fee income primarily due to changes in consumer retail purchase and payment behavior in the current economic environment. This decrease was partially offset by the absence of a negative valuation adjustment on the interest-only strip recorded in 2008. In addition, all other income in 2008 included the gain associated with the Visa initial public offering (IPO).

Provision for credit losses increased by \$9.9 billion to \$30.1 billion as economic conditions led to higher losses in the consumer card and consumer lending portfolios including a higher level of bankruptcies. Also contributing to the increase were higher reserve additions related to new draws on previously securitized accounts as well as an approximate \$800 million addition to increase the reserve coverage to approximately 12 months of charge-offs in consumer credit card. These reserve additions were partially offset by the beneficial impact of reserve reductions from improving delinquency trends in the second half of 2009.

Noninterest expense decreased \$1.2 billion, or 13 percent, to \$8.0 billion due to lower operating and marketing costs. In addition, noninterest expense in 2008 included benefits associated with the Visa IPO.

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The table below and the following discussion present selected key indicators for the *Global Card Services* and credit card portfolios. Credit card includes U.S., Europe and Canada consumer credit card and does not include business card, debit card and consumer lending.

### Key Statistics

(Dollars in millions)	2009	2008
<b>Global Card Services</b>		
Average – total loans:		
Managed	\$216,654	\$236,714
Held	118,201	132,313
Year end – total loans:		
Managed	201,230	233,040
Held	111,515	132,080
Managed net losses <sup>(1)</sup> :		
Amount	26,655	15,723
Percent <sup>(2)</sup>	12.30%	6.64%
<b>Credit Card</b>		
Average – total loans:		
Managed	\$170,486	\$184,246
Held	72,033	79,845
Year end – total loans:		
Managed	160,824	182,234
Held	71,109	81,274
Managed net losses <sup>(1)</sup> :		
Amount	19,185	11,382
Percent <sup>(2)</sup>	11.25%	6.18%

<sup>(1)</sup>Represents net charge-offs on held loans combined with realized credit losses associated with the securitized loan portfolio.

<sup>(2)</sup>Ratios are calculated as managed net losses divided by average outstanding managed loans during the year.

*Global Card Services* managed net losses increased \$10.9 billion to \$26.7 billion, or 12.30 percent of average outstandings, compared to \$15.7 billion, or 6.64 percent in 2008. This increase was driven by portfolio deterioration due to economic conditions including a higher level of bankruptcies. Additionally, consumer lending net charge-offs increased \$2.1 billion to \$4.3 billion, or 17.75 percent of average outstandings compared to \$2.2 billion, or 7.98 percent in 2008. Lower loan balances driven by reduced marketing and tightened credit criteria also adversely impacted net charge-off ratios.

Managed consumer credit card net losses increased \$7.8 billion to \$19.2 billion, or 11.25 percent of average credit card outstandings, compared to \$11.4 billion, or 6.18 percent in 2008. The increase was driven by portfolio deterioration due to economic conditions including elevated unemployment, underemployment and a higher level of bankruptcies.

For more information on credit quality, see Consumer Portfolio Credit Risk Management beginning on page 54.

## Home Loans & Insurance

(Dollars in millions)	2009	2008
Net interest income <sup>(1)</sup>	\$ 4,974	\$ 3,311
Noninterest income:		
Mortgage banking income	9,321	4,422
Insurance income	2,346	1,416
All other income	261	161
Total noninterest income	11,928	5,999
Total revenue, net of interest expense	16,902	9,310
Provision for credit losses	11,244	6,287
Noninterest expense	11,683	6,962
Loss before income taxes	(6,025)	(3,939)
Income tax benefit <sup>(1)</sup>	(2,187)	(1,457)
<b>Net loss</b>	<b>\$ (3,838)</b>	<b>\$ (2,482)</b>
Net interest yield <sup>(1)</sup>	2.57%	2.55%
Efficiency ratio <sup>(1)</sup>	69.12	74.78

### Balance Sheet

Average		
Total loans and leases	\$130,519	\$105,724
Total earning assets	193,262	129,674
Total assets	230,234	147,461
Allocated equity	20,533	9,517
<b>Year end</b>		
Total loans and leases	\$131,302	\$122,947
Total earning assets	188,466	175,609
Total assets	232,706	205,046

<sup>(1)</sup>FTE basis

*Home Loans & Insurance* generates revenue by providing an extensive line of consumer real estate products and services to customers nationwide. *Home Loans & Insurance* products are available to our customers through a retail network of 6,011 banking centers, mortgage loan officers in approximately 880 locations and a sales force offering our customers direct telephone and online access to our products. These products are also offered through our correspondent and wholesale loan acquisition channels. *Home Loans & Insurance* products include fixed and adjustable rate first-lien mortgage loans for home purchase and refinancing needs, reverse mortgages, home equity lines of credit and home equity loans. First mortgage products are either sold into the secondary mortgage market to investors while retaining MSR's and the Bank of America customer relationships, or are held on our balance sheet in *All Other* for ALM purposes. *Home Loans & Insurance* is not impacted by the Corporation's mortgage production retention decisions as *Home Loans & Insurance* is compensated for the decision on a management accounting basis with a corresponding offset recorded in *All Other*. In addition, *Home Loans & Insurance* offers property, casualty, life, disability and credit insurance.

While the results of Countrywide's deposit operations are included in *Deposits*, the majority of its ongoing operations are recorded in *Home Loans & Insurance*. Countrywide's acquired first mortgage and discontinued real estate portfolios are recorded in *All Other* and are managed as part of our overall ALM activities.

*Home Loans & Insurance* includes the impact of migrating customers and their related loan balances between *GWIM* and *Home Loans & Insurance*. As of the date of migration, the associated net interest income

and noninterest expense are recorded in the segment to which the customers were migrated. Total loans of \$11.5 billion were migrated from *GWIM* in 2009 compared to \$1.6 billion in 2008. The increase was mainly due to client segmentation threshold changes resulting from the Merrill Lynch acquisition.

*Home Loans & Insurance* recorded a net loss of \$3.8 billion in 2009 compared to a net loss of \$2.5 billion in 2008, as growth in noninterest income and net interest income was more than offset by higher provision for credit losses and higher noninterest expense.

Net interest income grew \$1.7 billion, or 50 percent, driven primarily by an increase in average loans held-for-sale (LHFS) and home equity loans. The \$19.1 billion increase in average LHFS was the result of higher mortgage loan volume driven by the lower interest rate environment. The growth in average home equity loans of \$23.7 billion, or 23 percent, was due primarily to the migration of certain loans from *GWIM* to *Home Loans & Insurance* as well as the full-year impact of Countrywide balances.

Noninterest income increased \$5.9 billion to \$11.9 billion driven by higher mortgage banking income which benefited from the full-year impact of Countrywide and lower current interest rates which drove higher production income.

Provision for credit losses increased \$5.0 billion to \$11.2 billion driven by continued economic and housing market weakness particularly in geographic areas experiencing higher unemployment and falling home prices. Additionally, reserve increases in the Countrywide home equity purchased impaired loan portfolio were \$2.8 billion higher in 2009 compared to 2008 reflecting further reduction in expected principal cash flows.

Noninterest expense increased \$4.7 billion to \$11.7 billion largely due to the full-year impact of Countrywide as well as increased compensation costs and other expenses related to higher production volume and delinquencies. Partly contributing to the increase in expenses was the more than doubling of personnel and other costs in the area of our business that is responsible for assisting distressed borrowers with loan modifications or other workout solutions.

### Mortgage Banking Income

We categorize *Home Loans & Insurance* mortgage banking income into production and servicing income. Production income is comprised of revenue from the fair value gains and losses recognized on our IRLCs and LHFS and the related secondary market execution, and costs related to representations and warranties in the sales transactions and other obligations incurred in the sales of mortgage loans. In addition, production income includes revenue for transfers of mortgage loans from *Home Loans & Insurance* to the ALM portfolio related to the Corporation's mortgage production retention decisions which is eliminated in *All Other*.

Servicing activities primarily include collecting cash for principal, interest and escrow payments from borrowers, disbursing customer draws for lines of credit and accounting for and remitting principal and interest payments to investors and escrow payments to third parties. Our home retention efforts are also part of our servicing activities, along with responding to customer inquiries and supervising foreclosures and property dispositions. Servicing income includes ancillary income earned in connection with these activities such as late fees, and MSR valuation adjustments, net of economic hedge activities.

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The following table summarizes the components of mortgage banking income.

Mortgage Banking Income		
(Dollars in millions)	2009	2008
Production income	\$ 5,539	\$ 2,105
Service income:		
Servicing fees and ancillary income	6,200	3,531
Impact of customer payments	(3,709)	(3,314)
Fair value changes of MSRs, net of economic hedge results	712	1,906
Other servicing-related revenue	579	194
Total net servicing income	3,782	2,317
<b>Total Home Loans &amp; Insurance mortgage banking income</b>	<b>9,321</b>	<b>4,422</b>
Other business segments' mortgage banking income (loss) <sup>(1)</sup>	(530)	(335)
<b>Total consolidated mortgage banking income</b>	<b>\$ 8,791</b>	<b>\$ 4,087</b>

<sup>(1)</sup>Includes the effect of transfers of mortgage loans from *Home Loans & Insurance* to the ALM portfolio in *All Other*.

Production income increased \$3.4 billion in 2009 compared to 2008. This increase was driven by higher mortgage volumes due in large part to Countrywide and also to higher refinance activity resulting from the lower interest rate environment, partially offset by an increase in representations and warranties expense to \$1.9 billion in 2009 from \$246 million in 2008. The increase in representations and warranties expense was driven by increased estimates of defaults reflecting deterioration in the economy and housing markets combined with a higher rate of repurchase or similar requests. For further information regarding representations and warranties, see *Note 8 – Securitizations* to the Consolidated Financial Statements and the Consumer Portfolio Credit Risk Management – Residential Mortgage discussion beginning on page 56.

Net servicing income increased \$1.5 billion in 2009 compared to 2008 largely due to the full-year impact of Countrywide which drove an increase of \$2.7 billion in servicing fees and ancillary income partially offset by lower MSR performance, net of hedge activities. The fair value changes of MSRs, net of economic hedge results were \$712 million and \$1.9 billion in 2009 and 2008. The positive 2009 MSR results were primarily driven by changes in the forward interest rate curve. The positive 2008 MSR results were driven primarily by the expectation that weakness in the housing market would lessen the impact of decreasing market interest rates on expected future prepayments. For further discussion on MSRs and the related hedge instruments, see *Mortgage Banking Risk Management* on page 86.

The following table presents select key indicators for *Home Loans & Insurance*.

Home Loans & Insurance Key Statistics		
(Dollars in millions, except as noted)	2009	2008
<b>Loan production</b>		
Home Loans & Insurance:		
First mortgage	\$357,371	\$128,945
Home equity	10,488	31,998
Total Corporation <sup>(1)</sup> :		
First mortgage	378,105	140,510
Home equity	13,214	40,489
<b>Year end</b>		
Mortgage servicing portfolio (in billions) <sup>(2)</sup>	\$ 2,151	\$ 2,057
Mortgage loans serviced for investors (in billions)	1,716	1,654
Mortgage servicing rights:		
Balance	19,465	12,733
Capitalized mortgage servicing rights (% of loans serviced for investors)	113 bps	77 bps

<sup>(1)</sup>In addition to loan production in *Home Loans & Insurance*, the remaining first mortgage and home equity loan production is primarily in *GWIM*.

<sup>(2)</sup>Servicing of residential mortgage loans, home equity lines of credit, home equity loans and discontinued real estate mortgage loans.

First mortgage production in *Home Loans & Insurance* was \$357.4 billion in 2009 compared to \$128.9 billion in 2008. The increase of \$228.4 billion was due in large part to the full-year impact of Countrywide as well as an increase in the mortgage market driven by a decline in interest rates. Home equity production was \$10.5 billion in 2009 compared to \$32.0 billion in 2008. The decrease of \$21.5 billion was primarily due to our more stringent underwriting guidelines for home equity lines of credit and loans as well as lower consumer demand.

At December 31, 2009, the consumer MSR balance was \$19.5 billion, which represented 113 bps of the related unpaid principal balance as compared to \$12.7 billion, or 77 bps of the related principal balance at December 31, 2008. The increase in the consumer MSR balance was driven by increases in the forward interest rate curve and the additional MSRs recorded in connection with sales of loans. This resulted in the 36 bps increase in the capitalized MSRs as a percentage of loans serviced for investors.

## Global Banking

(Dollars in millions)	2009	2008
Net interest income <sup>(1)</sup>	\$ 11,250	\$ 10,755
Noninterest income:		
Service charges	3,954	3,233
Investment banking income	3,108	1,371
All other income	4,723	1,437
Total noninterest income	11,785	6,041
Total revenue, net of interest expense	23,035	16,796
Provision for credit losses	8,835	3,130
Noninterest expense	9,539	6,684
Income before income taxes	4,661	6,982
Income tax expense <sup>(1)</sup>	1,692	2,510
<b>Net income</b>	<b>\$ 2,969</b>	<b>\$ 4,472</b>
Net interest yield <sup>(1)</sup>	3.34%	3.30%
Return on average equity	4.93	8.84
Efficiency ratio <sup>(1)</sup>	41.41	39.80

### Balance Sheet

Average		
Total loans and leases	\$315,002	\$318,325
Total earning assets <sup>(2)</sup>	337,315	325,764
Total assets <sup>(2)</sup>	394,140	382,790
Total deposits	211,261	177,528
Allocated equity	60,273	50,583
<b>Year end</b>		
Total loans and leases	\$291,117	\$328,574
Total earning assets <sup>(2)</sup>	343,057	338,915
Total assets <sup>(2)</sup>	398,061	394,541
Total deposits	227,437	215,519

<sup>(1)</sup>FTE basis

<sup>(2)</sup>Total earning assets and total assets include asset allocations to match liabilities (i.e., deposits).

Global Banking provides a wide range of lending-related products and services, integrated working capital management, treasury solutions and investment banking services to clients worldwide through our network of offices and client relationship teams along with various product partners. Our clients include multinationals, middle-market and business banking companies, correspondent banks, commercial real estate firms and governments. Our lending products and services include commercial loans and commitment facilities, real estate lending, leasing, trade finance, short-term credit facilities, asset-based lending and indirect consumer loans. Our capital management and treasury solutions include treasury management, foreign exchange and short-term investing options. Our investment banking services provide our commercial and corporate issuer clients with debt and equity underwriting and distribution capabilities as well as merger-related and other advisory services. Global Banking also includes the results of our merchant services joint venture, as discussed below, and the economic hedging of our credit risk to certain exposures utilizing various risk mitigation tools. Our clients are supported in offices throughout the world that are divided into four distinct geographic regions: U.S. and Canada; Asia Pacific; Europe, Middle East and Africa; and Latin America. For more information on our foreign operations, see Foreign Portfolio beginning on page 74.

During the second quarter of 2009, we entered into a joint venture agreement with First Data Corporation (First Data) to form Banc of America Merchant Services, LLC. The joint venture provides payment solutions, including credit, debit and prepaid cards, and check and e-commerce payments to merchants ranging from small businesses to corporate and commercial clients worldwide. We contributed approximately 240,000 merchant relationships, a sales force of approximately 350 associates, and the use of the Bank of America brand name. First Data contributed

approximately 140,000 merchant relationships, 200 sales associates and state of the art technology. The joint venture and clients benefit from both companies' comprehensive suite of leading payment solutions capabilities. At December 31, 2009, we owned 46.5 percent of the joint venture and we account for our investment under the equity method of accounting. The third party investor has the right to put their interest to the joint venture which would have the effect of increasing the Corporation's ownership interest to 49 percent. In connection with the formation of the joint venture, we recorded a pre-tax gain of \$3.8 billion which represents the excess of fair value over the carrying value of our contributed merchant processing business.

Global Banking net income decreased \$1.5 billion, or 34 percent, to \$3.0 billion in 2009 compared to 2008 as an increase in revenue was more than offset by higher provision for credit losses and noninterest expense.

Net interest income increased \$495 million, or five percent, as average deposits grew \$33.7 billion, or 19 percent, driven by deposit growth as our clients remain very liquid. In addition, average deposit growth benefited from a flight-to-safety in late 2008. Net interest income also benefited from improved loan spreads on new, renewed and amended facilities. These increases were partially offset by a \$3.3 billion, or one percent, decline in average loan balances due to decreased client demand as clients are deleveraging and capital markets began to open up so that corporate clients could access other funding sources. In addition, net interest income was negatively impacted by a lower net interest income allocation from ALM activities and increased nonperforming loans.

Noninterest income increased \$5.7 billion, or 95 percent, to \$11.8 billion, mainly driven by the \$3.8 billion pre-tax gain related to the contribution of the merchant processing business into a joint venture, higher investment banking income and service charges. Investment banking income increased \$1.7 billion due to the acquisition of Merrill Lynch and strong growth in debt and equity capital markets fees. Service charges increased \$721 million, or 22 percent, driven by the Merrill Lynch acquisition and the impact of fees charged for services provided to the merchant processing joint venture. All other income increased \$3.3 billion compared to the prior year from the gain related to the contribution of the merchant processing business. All other income also includes our proportionate share of the joint venture net income, where prior to formation of the joint venture these activities were reflected in card income. In addition, noninterest income benefited in 2008 from Global Banking's share of the Visa IPO gain.

The provision for credit losses increased \$5.7 billion to \$8.8 billion in 2009 compared to 2008 primarily driven by higher net charge-offs and reserve additions in the commercial real estate and commercial – domestic portfolios resulting from deterioration across a broad range of property types, industries and borrowers.

Noninterest expense increased \$2.9 billion, or 43 percent, to \$9.5 billion, primarily attributable to the Merrill Lynch acquisition and higher FDIC insurance and special assessment costs. These items were partially offset by a reduction in certain merchant-related expenses that are now incurred by the joint venture and a change in compensation that delivers a greater portion of incentive pay over time. In addition, noninterest expense in 2008 also included benefits associated with the Visa IPO.

### Global Banking Revenue

Global Banking evaluates its revenue from two primary client views, global commercial banking and global corporate and investment banking. Global commercial banking primarily includes revenue related to our commercial and business banking clients who are generally defined as companies with sales between \$2 million and \$2 billion including middle-market and multinational clients as well as commercial real estate clients. Global

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corporate and investment banking primarily includes revenue related to our large corporate clients including multinationals which are generally defined as companies with sales in excess of \$2 billion. Additionally, global corporate and investment banking revenue also includes debt and equity underwriting and merger-related advisory services (net of revenue sharing primarily with *Global Markets*). The following table presents further detail regarding *Global Banking* revenue.

(Dollars in millions)	2009	2008
<b>Global Banking revenue</b>		
Global commercial banking	\$15,209	\$11,362
Global corporate and investment banking	7,826	5,434
<b>Total Global Banking revenue</b>	<b>\$23,035</b>	<b>\$16,796</b>

*Global Banking* revenue increased \$6.2 billion to \$23.0 billion in 2009 compared to 2008. *Global Banking* revenue consists of credit-related revenue derived from lending-related products and services, treasury services-related revenue primarily from capital and treasury management, and investment banking income.

Global commercial banking revenue increased \$3.8 billion, or 34 percent, primarily driven by the

- gain from the contribution of the merchant processing business to the joint venture.

Credit-related revenue within global commercial banking increased \$960 million to \$6.7 billion due to improved loan spreads on new, renewed and amended facilities and the Merrill Lynch acquisition. Average loans and leases decreased \$3.7 billion to \$219.0 billion as increased balances due to the Merrill Lynch acquisition were more than offset by reduced client demand.

Treasury services-related revenue within global commercial banking increased \$2.9 billion to \$8.5 billion driven by the \$3.8 billion gain related to the contribution of the merchant services business to the joint venture, partially offset by lower net interest income and the absence of the 2008 gain associated with the Visa IPO. Average treasury services deposit balances increased \$22.7 billion to \$130.9 billion driven by clients managing their balances.

Global corporate and investment banking revenue increased \$2.4 billion in 2009 compared to 2008 driven primarily by the Merrill Lynch acquisition which resulted in increased debt and equity capital markets fees, and higher net interest income due mainly to growth in average deposits.

Credit-related revenue within global corporate and investment banking increased \$387 million to \$2.9 billion in 2009 compared to 2008 driven by improved loan spreads and the Merrill Lynch acquisition, partially offset by the adverse impact of increased nonperforming loans and the higher cost of credit hedging. Average loans and leases remained essentially flat as reduced demand offset the impact of the Merrill Lynch acquisition.

Treasury services-related revenue within global corporate and investment banking decreased \$438 million to \$2.5 billion in 2009 driven by lower net interest income, service fees and card income. Average deposit balances increased \$11.1 billion to \$80.4 billion during 2009 primarily due to clients managing their balances.

### Investment Banking Income

Product specialists within *Global Markets* work closely with *Global Banking* on underwriting and distribution of debt and equity securities and certain other products. To reflect the efforts of *Global Markets* and *Global Banking* in servicing our clients with the best product capabilities, we allocate revenue to the two segments based on relative contribution. Therefore, to provide a complete discussion of our consolidated investment banking income, we have included the following table that presents total investment banking income for the Corporation.

(Dollars in millions)	2009	2008
<b>Investment banking income</b>		
Advisory <sup>(1)</sup>	\$1,167	\$ 546
Debt issuance	3,124	1,539
Equity issuance	1,964	624
	<b>6,255</b>	2,709
Offset for intercompany fees <sup>(2)</sup>	(704)	(446)
<b>Total investment banking income</b>	<b>\$5,551</b>	<b>\$2,263</b>

<sup>(1)</sup>Advisory includes fees on debt and equity advisory, and merger and acquisitions.

<sup>(2)</sup>The offset to fees paid on the Corporation's transactions.

Investment banking income increased \$3.3 billion to \$5.6 billion in 2009 compared to 2008. The increase was largely due to the Merrill Lynch acquisition and favorable market conditions for debt and equity issuances. Debt issuance fees increased \$1.6 billion due primarily to leveraged finance and investment grade bond issuances. Equity issuance fees increased \$1.3 billion as we benefited from the increased size of the investment banking platform. Advisory fees increased \$621 million attributable to the larger advisory platform partially offset by decreased merger and acquisitions activity.

## Global Markets

(Dollars in millions)	2009	2008
Net interest income <sup>(1)</sup>	\$ 6,120	\$ 5,151
Noninterest income:		
Investment and brokerage services	2,552	752
Investment banking income	2,850	1,337
Trading account profits (losses)	11,675	(5,809)
All other income (loss)	(2,571)	(5,262)
Total noninterest income (loss)	14,506	(8,982)
Total revenue, net of interest expense	20,626	(3,831)
Provision for credit losses	400	(50)
Noninterest expense	10,042	3,906
Income (loss) before income taxes	10,184	(7,687)
Income tax expense (benefit) <sup>(1)</sup>	3,007	(2,771)
<b>Net income (loss)</b>	<b>\$ 7,177</b>	<b>\$ (4,916)</b>
Return on average equity	23.33%	n/m
Efficiency ratio <sup>(1)</sup>	48.68	n/m

### Balance Sheet

Average		
Total trading-related assets <sup>(2)</sup>	\$507,648	\$338,074
Total market-based earning assets	481,542	360,667
Total earning assets	490,406	366,195
Total assets	656,621	427,734
Allocated equity	30,765	12,839
<b>Year end</b>		
Total trading-related assets <sup>(2)</sup>	\$411,212	\$244,174
Total market-based earning assets	404,467	237,452
Total earning assets	409,717	243,275
Total assets	538,456	306,693

<sup>(1)</sup>FTE basis

<sup>(2)</sup>Includes assets which are not considered earning assets (i.e., derivative assets).

n/m= not meaningful

*Global Markets* provides financial products, advisory services, financing, securities clearing, settlement and custody services globally to our institutional investor clients in support of their investing and trading activities. We also work with our commercial and corporate clients to provide debt and equity underwriting and distribution capabilities and risk management products using interest rate, equity, credit, currency and commodity derivatives, foreign exchange, fixed income and mortgage-related products. The business may take positions in these products and participate in market-making activities dealing in government securities, equity and equity-linked securities, high-grade and high-yield corporate debt securities, commercial paper, MBS and asset-backed securities (ABS). Underwriting debt and equity, securities research and certain market-based activities are executed through our global broker/dealer affiliates which are our primary dealers in several countries. *Global Markets* is a leader in the global distribution of fixed income, currency and energy commodity products and derivatives. *Global Markets* also has one of the largest equity trading operations in the world and is a leader in the origination and distribution of equity and equity-related products.

Net income increased \$12.1 billion to \$7.2 billion in 2009 compared to a loss of \$4.9 billion in 2008 as increased noninterest income driven by trading account profits was partially offset by higher noninterest expense.

Net interest income, almost all of which is market-based, increased \$969 million to \$6.1 billion due to growth in average market-based earning assets which increased \$120.9 billion or 34 percent, driven primarily by the Merrill Lynch acquisition.

Noninterest income increased \$23.5 billion due to the Merrill Lynch acquisition, favorable core trading results and decreased write-downs on legacy assets partially offset by negative credit valuation adjustments on derivative liabilities due to improvement in our credit spreads in 2009. Noninterest expense increased \$6.1 billion, largely attributable to the Merrill Lynch acquisition. This increase was partially offset by a change in compensation that delivers a greater portion of incentive pay over time.

### Sales and Trading Revenue

*Global Markets* revenue is primarily derived from sales and trading and investment banking activities which are shared between *Global Markets* and *Global Banking*. *Global Banking* originates certain deal-related transactions with our corporate and commercial clients that are executed and distributed by *Global Markets*. In order to reflect the relative contribution of each business segment, a revenue-sharing agreement has been implemented which attributes revenue accordingly (see page 34 for a discussion of investment banking fees on a consolidated basis). In addition, certain gains and losses related to write-downs on legacy assets and select trading results are also allocated or shared between *Global Markets* and *Global Banking*. Therefore, in order to provide a complete discussion of our sales and trading revenue, the following table and related discussion present total sales and trading revenue for the consolidated Corporation. Sales and trading revenue is segregated into fixed income (investment and noninvestment grade corporate debt obligations, commercial mortgage-backed securities (CMBS), residential mortgage-backed securities (RMBS) and CDOs), currencies (interest rate and foreign exchange contracts), commodities (primarily futures, forwards, swaps and options) and equity income from equity-linked derivatives and cash equity activity.

(Dollars in millions)	2009	2008
<b>Sales and trading revenue (1, 2)</b>		
Fixed income, currencies and commodities (FICC)	\$12,727	\$(7,625)
Equity income	4,901	743
<b>Total sales and trading revenue</b>	<b>\$17,628</b>	<b>\$(6,882)</b>

<sup>(1)</sup>Includes \$356 million and \$257 million of net interest income on a FTE basis for 2009 and 2008.

<sup>(2)</sup>Includes \$1.1 billion and \$1.2 billion of write-downs on legacy assets that were allocated to *Global Banking* for 2009 and 2008.

Sales and trading revenue increased \$24.5 billion to \$17.6 billion in 2009 compared to a loss of \$6.9 billion in 2008 due to the addition of Merrill Lynch and the improving economy. Write-downs on legacy assets in 2009 were \$3.8 billion with \$2.7 billion included in *Global Markets* as compared to \$10.5 billion in 2008 with \$9.3 billion recorded in *Global Markets*. Further, we recorded negative net credit valuation adjustments on derivative liabilities of \$801 million resulting from improvements in our credit spreads in 2009 compared to a gain of \$354 million in 2008.

FICC revenue increased \$20.4 billion to \$12.7 billion in 2009 compared to 2008 primarily driven by credit and structured products which continued to benefit from improved market liquidity and tighter credit spreads as well as new issuance capabilities.

- During 2009, we incurred \$2.2 billion of losses resulting from our CDO exposure which includes our super senior, warehouse, sales and trading positions, hedging activities and counterparty credit risk valuations. This compares to \$4.8 billion in CDO-related losses for 2008. Included in the above losses were \$910 million and \$1.1 billion of losses in 2009 and 2008 related to counterparty risk on our CDO-related exposure. Also included in the above losses were other-than-temporary impairment charges of \$1.2 billion in 2009 compared to \$3.3 billion in 2008 related to CDOs and retained positions classified as AFS debt securities. See the following detailed CDO exposure discussion.
- During 2009 we recorded \$1.6 billion of losses, net of hedges, on CMBS funded debt and forward finance commitments compared to losses of \$944 million in 2008. These losses were concentrated in the more difficult to hedge floating-rate debt. In addition, we recorded \$670 million in losses associated with equity investments we made in acquisition-related financing transactions compared to \$545 million in losses in the prior year. At December 31, 2009 and 2008, we held \$5.3 billion and \$6.9 billion of funded and unfunded CMBS exposure of which \$4.4 billion and \$6.0 billion were primarily floating-rate

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acquisition-related financings to major, well-known operating companies. CMBS exposure decreased as \$4.1 billion of funded CMBS debt acquired in the Merrill Lynch acquisition was partially offset by a transfer of \$3.8 billion of CMBS funded debt to commercial loans held for investment as we plan to hold these positions and, to a lesser extent, by loan sales and paydowns.

- We incurred losses in 2009 on our leveraged loan exposures of \$286 million compared to \$1.1 billion in 2008. At December 31, 2009, the carrying value of our leveraged funded positions held for distribution was \$2.4 billion, which included \$1.2 billion from the Merrill Lynch acquisition, compared to \$2.8 billion at December 31, 2008, which did not include Merrill Lynch. At December 31, 2009, 99 percent of the carrying value of the leveraged funded positions was senior secured.

- We recorded a loss of \$100 million on auction rate securities (ARS) in 2009 compared to losses of \$898 million in 2008 which reflects stabilizing valuations on ARS during the year. We have agreed to purchase ARS at par from certain customers in connection with an agreement with federal and state securities regulators. During 2009, we purchased a net \$3.8 billion of ARS from our customers and at December 31, 2009, our outstanding buyback commitment was \$291 million.

Equity products sales and trading revenue increased \$4.2 billion to \$4.9 billion in 2009 compared to 2008 driven by the addition of Merrill Lynch's trading and financing platforms.

### Collateralized Debt Obligation Exposure

CDO vehicles hold diversified pools of fixed income securities and issue multiple tranches of debt securities including commercial paper, mezzanine and equity securities. Our CDO exposure can be divided into funded and unfunded super senior liquidity commitment exposure, other super senior exposure (i.e., cash positions and derivative contracts), warehouse, and sales and trading positions. For more information on our CDO liquidity commitments, see *Note 9 – Variable Interest Entities* to the Consolidated Financial Statements. Super senior exposure represents the most senior class of commercial paper or notes that are issued by the CDO vehicles. These financial instruments benefit from the subordination of all other securities issued by the CDO vehicles.

As presented in the following table, at December 31, 2009, our hedged and unhedged super senior CDO exposure before consideration of insurance, net of write-downs was \$3.6 billion.

### Super Senior Collateralized Debt Obligation Exposure

December 31, 2009

(Dollars in millions)	Subprime (1)	Retained Positions	Total Subprime	Non-Subprime (2)	Total
Unhedged	\$ 938	\$ 528	\$ 1,466	\$ 839	\$2,305
Hedged (3)	661	–	661	652	1,313
<b>Total</b>	<b>\$ 1,599</b>	<b>\$ 528</b>	<b>\$ 2,127</b>	<b>\$ 1,491</b>	<b>\$3,618</b>

(1) Classified as subprime when subprime consumer real estate loans make up at least 35 percent of the original net exposure value of the underlying collateral.

(2) Includes highly rated collateralized loan obligations and CMBS super senior exposure.

(3) Hedged amounts are presented at carrying value before consideration of the insurance.

We value our CDO structures using the average of all prices obtained from either external pricing services or offsetting trades for approximately 89 percent and 77 percent of the CDO exposure and related retained positions. The majority of the remaining positions where no pricing quotes were available were valued using matrix pricing and projected cash flows. Unrealized losses recorded in accumulated OCI on super senior cash positions and retained positions from liquidated CDOs in aggregate increased \$88 million during 2009 to \$104 million at December 31, 2009.

At December 31, 2009, total subprime super senior unhedged exposure of \$1.466 billion was carried at 15 percent and the \$839 million of non-subprime unhedged exposure was carried at 51 percent of their original net exposure amounts. Net hedged subprime super senior exposure of \$661 million was carried at 13 percent and the \$652 million of hedged non-subprime super senior exposure was carried at 64 percent of its original net exposure.

The following table presents the carrying values of our subprime net exposures including subprime collateral content and percentages of certain vintages.

### Unhedged Subprime Super Senior Collateralized Debt Obligation Carrying Values

December 31, 2009

(Dollars in millions)	Subprime Net Exposure	Carrying Value as a Percent of Original Net Exposure	Subprime Content of Collateral (1)	Vintage of Subprime Collateral	
				Percent in 2006/2007 Vintages	Percent in 2005/Prior Vintages
<b>Mezzanine super senior liquidity commitments</b>	\$ 88	7%	100%	85%	15%
<b>Other super senior exposure</b>					
High grade	577	20	43	23	77
Mezzanine	272	16	34	79	21
CDO-squared	1	1	100	100	–
<b>Total other super senior</b>	<b>850</b>				
<b>Total super senior</b>	<b>938</b>	<b>15</b>			
<b>Retained positions from liquidated CDOs</b>	<b>528</b>	<b>15</b>	28	22	78
<b>Total</b>	<b>\$ 1,466</b>	<b>15</b>			

(1) Based on current net exposure value.



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At December 31, 2009, we held purchased insurance on our subprime and non-subprime super senior CDO exposure with a notional value of \$5.2 billion and \$1.0 billion from monolines and other financial guarantors. Monolines provided \$3.8 billion of the purchased insurance in the form of CDS, total return swaps or financial guarantees. In addition, we held collateral in the form of cash and marketable securities of

\$1.1 billion related to our non-monoline purchased insurance. In the case of default, we look to the underlying securities and then to recovery on purchased insurance. The table below provides notional, receivable, counterparty credit valuation adjustment and gains (write-downs) on insurance purchased from monolines.

### Credit Default Swaps with Monoline Financial Guarantors

December 31, 2009

(Dollars in millions)	Super Senior CDOs	Other Guaranteed Positions	Total
Notional	\$ 3,757	\$ 38,834	\$42,591
Mark-to-market or guarantor receivable	\$ 2,833	\$ 8,256	\$11,089
Credit valuation adjustment	(1,873)	(4,132)	(6,005)
<b>Total</b>	<b>\$ 960</b>	<b>\$ 4,124</b>	<b>\$ 5,084</b>
Credit valuation adjustment % (Write-downs) gains during 2009	66% \$ (961)	50% \$ 98	54% \$ (863)

Monoline wrap protection on our super senior CDOs had a notional value of \$3.8 billion at December 31, 2009, with a receivable of \$2.8 billion and a counterparty credit valuation adjustment of \$1.9 billion, or 66 percent. During 2009, we recorded \$961 million of counterparty credit risk-related write-downs on these positions. At December 31, 2008, the monoline wrap on our super senior CDOs had a notional value of \$2.8 billion, with a receivable of \$1.5 billion and a counterparty credit valuation adjustment of \$1.1 billion, or 72 percent.

In addition to the monoline financial guarantor exposure related to super senior CDOs, we had \$38.8 billion of notional exposure to monolines that predominantly hedge corporate collateralized loan obligation and CDO exposure as well as CMBS, RMBS and other ABS cash and synthetic exposures that were acquired from Merrill Lynch. At December 31, 2008, the monoline wrap on our other guaranteed positions was \$5.9 billion of notional exposure. Mark-to-market monoline derivative credit exposure was \$8.3 billion at December 31, 2009 compared to \$694 million at December 31, 2008. This increase was driven

by the addition of Merrill Lynch exposures as well as credit deterioration related to underlying counterparties, partially offset by positive valuation adjustments on legacy assets and terminated monoline contracts.

At December 31, 2009, the counterparty credit valuation adjustment related to non-super senior CDO monoline derivative exposure was \$4.1 billion which reduced our net mark-to-market exposure to \$4.1 billion. We do not hold collateral against these derivative exposures. Also, during 2009 we recognized gains of \$113 million for counterparty credit risk related to these positions.

With the Merrill Lynch acquisition, we acquired a loan with a carrying value of \$4.4 billion as of December 31, 2009 that is collateralized by U.S. super senior ABS CDOs. Merrill Lynch originally provided financing to the borrower for an amount equal to approximately 75 percent of the fair value of the collateral. The loan has full recourse to the borrower and all scheduled payments on the loan have been received. Events of default under the loan are customary events of default, including failure to pay interest when due and failure to pay principal at maturity. Collateral for the loan is excluded from our CDO exposure discussions and the applicable tables.

**Global Wealth & Investment Management**

	2009				
	Total	Merrill Lynch Global Wealth Management <sup>(1)</sup>	U.S. Trust	Columbia Management	Other
(Dollars in millions)					
Net interest income <sup>(2)</sup>	\$ 5,564	\$ 4,567	\$ 1,361	\$ 32	\$ (396)
Noninterest income:					
Investment and brokerage services	9,273	6,130	1,254	1,090	799
All other income (loss)	3,286	1,684	48	(201)	1,755
Total noninterest income	12,559	7,814	1,302	889	2,554
Total revenue, net of interest expense	18,123	12,381	2,663	921	2,158
Provision for credit losses	1,061	619	442	-	-
Noninterest expense	13,077	9,411	1,945	932	789
Income (loss) before income taxes	3,985	2,351	276	(11)	1,369
Income tax expense (benefit) <sup>(2)</sup>	1,446	870	102	(4)	478
<b>Net income (loss)</b>	<b>\$ 2,539</b>	<b>\$ 1,481</b>	<b>\$ 174</b>	<b>\$ (7)</b>	<b>\$ 891</b>
Net interest yield <sup>(2)</sup>	2.53%	2.49%	2.58%	n/m	n/m
Return on average equity <sup>(3)</sup>	13.44	18.50	3.39	n/m	n/m
Efficiency ratio <sup>(2)</sup>	72.16	76.01	73.03	n/m	n/m
Year end – total assets <sup>(4)</sup>	\$254,192	\$ 195,175	\$55,371	\$ 2,717	n/m

	2008				
	Total	Merrill Lynch Global Wealth Management <sup>(1)</sup>	U.S. Trust	Columbia Management	Other
(Dollars in millions)					
Net interest income <sup>(2)</sup>	\$ 4,797	\$ 3,211	\$ 1,570	\$ 6	\$ 10
Noninterest income:					
Investment and brokerage services	4,059	1,001	1,400	1,496	162
All other income (loss)	(1,047)	58	18	(1,120)	(3)
Total noninterest income	3,012	1,059	1,418	376	159
Total revenue, net of interest expense	7,809	4,270	2,988	382	169
Provision for credit losses	664	561	103	-	-
Noninterest expense	4,910	1,788	1,831	1,126	165
Income (loss) before income taxes	2,235	1,921	1,054	(744)	4
Income tax expense (benefit) <sup>(2)</sup>	807	711	390	(275)	(19)
<b>Net income (loss)</b>	<b>\$ 1,428</b>	<b>\$ 1,210</b>	<b>\$ 664</b>	<b>\$ (469)</b>	<b>\$ 23</b>
Net interest yield <sup>(2)</sup>	2.97%	2.60%	3.05%	n/m	n/m
Return on average equity <sup>(3)</sup>	12.20	36.66	14.20	n/m	n/m
Efficiency ratio <sup>(2)</sup>	62.87	41.88	61.26	n/m	n/m
Year end – total assets <sup>(4)</sup>	\$189,073	\$ 137,282	\$57,167	\$ 2,923	n/m

<sup>(1)</sup>Effective January 1, 2009, as a result of the Merrill Lynch acquisition, we combined Merrill Lynch's wealth management business and our former Premier Banking & Investments business to form Merrill Lynch Global Wealth Management (MLGWM).

<sup>(2)</sup>FTE basis

<sup>(3)</sup>Average allocated equity for GWIM was \$18.9 billion and \$11.7 billion at December 31, 2009 and 2008.

<sup>(4)</sup>Total assets include asset allocations to match liabilities (i.e., deposits).

n/m= not meaningful

	December 31		Average Balance	
	2009	2008	2009	2008
(Dollars in millions)				
<b>Balance Sheet</b>				
Total loans and leases	\$ 99,596	\$ 89,401	\$103,398	\$ 87,593
Total earning assets <sup>(1)</sup>	219,866	179,319	219,612	161,685
Total assets <sup>(1)</sup>	254,192	189,073	251,969	170,973
Total deposits	224,840	176,186	225,980	160,702

<sup>(1)</sup>Total earning assets and total assets include asset allocations to match liabilities (i.e., deposits).

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GWIM provides a wide offering of customized banking, investment and brokerage services tailored to meet the changing wealth management needs of our individual and institutional customer base. Our clients have access to a range of services offered through three primary businesses: *MLGWM*; *U.S. Trust, Bank of America Private Wealth Management (U.S. Trust)*; and *Columbia*. The results of the Retirement & Philanthropic Services business, the Corporation's approximate 34 percent economic ownership interest in BlackRock and other miscellaneous items are included in *Other* within *GWIM*.

As part of the Merrill Lynch acquisition, we added its financial advisors and an economic ownership interest of approximately 50 percent in BlackRock, a publicly traded investment management company. During 2009, BlackRock completed its purchase of Barclays Global Investors, an asset management business, from Barclays PLC which had the effect of diluting our ownership interest in BlackRock and, for accounting purposes, was treated as a sale of a portion of our ownership interest. As a result, upon the closing of this transaction, the Corporation's economic ownership interest in BlackRock was reduced to approximately 34 percent and we recorded a pre-tax gain of \$1.1 billion.

Net income increased \$1.1 billion, or 78 percent, to \$2.5 billion as higher total revenue was partially offset by increases in noninterest expense and provision for credit losses.

Net interest income increased \$767 million, or 16 percent, to \$5.6 billion primarily due to the acquisition of Merrill Lynch partially offset by a lower net interest income allocation from ALM activities and the impact of the migration of client balances during 2009 to *Deposits* and *Home Loans & Insurance*. *GWIM's* average loan and deposit growth benefited from the acquisition of Merrill Lynch and the shift of client assets from off-balance sheet (e.g., money market funds) to on-balance sheet products (e.g., deposits) partially offset by the net migration of customer relationships. A more detailed discussion regarding migrated customer relationships and related balances is provided in the following *MLGWM* discussion.

Noninterest income increased \$9.5 billion to \$12.6 billion primarily due to higher investment and brokerage services income driven by the Merrill Lynch acquisition, the \$1.1 billion gain on our investment in BlackRock and the lower level of support provided to certain cash funds partially offset by the impact of lower average equity market levels and net outflows primarily in the cash complex.

Provision for credit losses increased \$397 million, or 60 percent, to \$1.1 billion, reflecting the weak economy during 2009 which drove higher net charge-offs in the consumer real estate and commercial portfolios including a single large commercial charge-off.

Noninterest expense increased \$8.2 billion to \$13.1 billion driven by the addition of Merrill Lynch and higher FDIC insurance and special assessment costs partially offset by lower revenue-related expenses.

## Client Assets

The following table presents client assets which consist of AUM, client brokerage assets, assets in custody and client deposits.

Client Assets	December 31	
	2009	2008
(Dollars in millions)		
Assets under management	\$ 749,852	\$523,159
Client brokerage assets <sup>(1)</sup>	1,270,461	172,106
Assets in custody	274,472	133,726
Client deposits	224,840	176,186
Less: Client brokerage assets and assets in custody included in assets under management	(346,682)	(87,519)
<b>Total net client assets</b>	<b>\$2,172,943</b>	<b>\$917,658</b>

<sup>(1)</sup> Client brokerage assets include non-discretionary brokerage and fee-based assets.

The increase in net client assets was driven by the acquisition of Merrill Lynch and higher equity market values at December 31, 2009 compared to 2008 partially offset by outflows that primarily occurred in cash and money market assets due to increasing interest rate pressure.

## Merrill Lynch Global Wealth Management

Effective January 1, 2009, as a result of the Merrill Lynch acquisition, we combined the Merrill Lynch wealth management business and our former *Premier Banking & Investments* business to form *MLGWM*. *MLGWM* provides a high-touch client experience through a network of approximately 15,000 client-facing financial advisors to our affluent customers with a personal wealth profile of at least \$250,000 of investable assets. The addition of Merrill Lynch created one of the largest financial advisor networks in the world. Merrill Lynch added \$10.3 billion in revenue and \$1.6 billion in net income during 2009. Total client balances in *MLGWM*, which include deposits, AUM, client brokerage assets and other assets in custody, were \$1.4 trillion at December 31, 2009.

*MLGWM* includes the impact of migrating customers and their related deposit and loan balances to or from *Deposits* and *Home Loans & Insurance*. As of the date of migration, the associated net interest income, noninterest income and noninterest expense are recorded in the segment to which the customers migrated. During 2009, total deposits of \$43.4 billion were migrated to *Deposits* from *MLGWM*. Conversely, during 2008, total deposits of \$20.5 billion were migrated from *Deposits* to *MLGWM*. During 2009 and 2008, total loans of \$16.6 billion and \$1.7 billion were migrated from *MLGWM*, of which \$11.5 billion and \$1.6 billion were migrated to *Home Loans & Insurance*. These changes in 2009 were mainly due to client segmentation threshold changes resulting from the Merrill Lynch acquisition.

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Net income increased \$271 million, or 22 percent, to \$1.5 billion as increases in noninterest income and net interest income were partially offset by higher noninterest expense. Net interest income increased \$1.4 billion, or 42 percent, to \$4.6 billion driven by higher average deposit and loan balances due to the acquisition of Merrill Lynch partially offset by a lower net interest income allocation from ALM activities, the impact of migration to *Deposits* and *Home Loans & Insurance*, and spread compression on deposits. Noninterest income rose \$6.8 billion to \$7.8 billion due to an increase in investment and brokerage services income of \$5.1 billion driven by the acquisition of Merrill Lynch. Provision for credit losses increased \$58 million, or 10 percent, to \$619 million primarily driven by increased credit costs related to the consumer real estate portfolio reflecting the weak housing market. Noninterest expense increased \$7.6 billion to \$9.4 billion driven by the acquisition of Merrill Lynch. In addition, noninterest expense was adversely impacted by higher FDIC insurance and special assessment costs.

### **U.S. Trust, Bank of America Private Wealth Management**

*U.S. Trust* provides comprehensive wealth management solutions to wealthy and ultra-wealthy clients with investable assets of more than \$3 million. In addition, *U.S. Trust* provides resources and customized solutions to meet clients' wealth structuring, investment management, trust and banking needs as well as specialty asset management services (oil and gas, real estate, farm and ranch, timberland, private businesses and tax advisory). Clients also benefit from access to resources available through the Corporation including capital markets products, large and complex financing solutions, and our extensive banking platform.

Net income decreased \$490 million, or 74 percent, to \$174 million driven by higher provision for credit losses and lower net interest income. Net interest income decreased \$209 million, or 13 percent, to \$1.4 billion due to a lower net interest income allocation from ALM activities partially offset by the shift of client assets from off-balance sheet (e.g., money market funds) to on-balance sheet products (e.g., deposits). Noninterest income decreased \$116 million, or eight percent, to \$1.3 billion driven by lower investment and brokerage services income due to lower valuations in the equity markets and a decline in transactional revenues offset by the addition of the Merrill Lynch trust business and lower losses related to ARS. Provision for credit losses increased \$339 million to \$442 million driven by higher net charge-offs, including a single large commercial charge-off, and higher reserve additions in the commercial and consumer real estate portfolios. Noninterest expense increased \$114 million, or six percent, to \$1.9 billion due to higher FDIC insurance and special assessment costs and the addition of the Merrill Lynch trust business which were partially offset by cost containment strategies and lower revenue-related expenses.

### **Columbia Management**

*Columbia* is an asset management business serving the needs of both institutional clients and individual customers. *Columbia* provides asset management products and services including mutual funds and separate accounts. *Columbia* mutual fund offerings provide a broad array of investment strategies and products including equity, fixed income (taxable and nontaxable) and money market (taxable and nontaxable) funds. *Columbia* distributes its products and services to institutional clients and individuals directly through *MLGWM*, *U.S. Trust*, *Global Banking* and nonproprietary channels including other brokerage firms.

During 2009, the Corporation reached an agreement to sell the long-term asset management business of *Columbia* to Ameriprise Financial, Inc., for consideration of approximately \$900 million to \$1.2 billion subject to certain adjustments including, among other factors, AUM net flows. This includes the management of *Columbia's* equity and fixed

income mutual funds and separate accounts. The transaction is expected to close in the second quarter of 2010, and is subject to regulatory approvals and customary closing conditions, including fund board, fund shareholder and other required client approvals.

*Columbia* recorded a net loss of \$7 million compared to a net loss of \$469 million in 2008. Net revenue increased \$539 million due to a reduction in losses of \$917 million related to support provided to certain cash funds offset by lower investment and brokerage services income of \$406 million. The decrease in investment and brokerage services income was driven by the impact of lower average equity market levels and net outflows primarily in the cash complex. Noninterest expense decreased \$194 million driven by lower revenue-related expenses, such as lower sub-advisory, distribution and dealer support expenses, and reduced personnel-related expenses.

### **Cash Funds Support**

Beginning in the second half of 2007, we provided support to certain cash funds managed within *Columbia*. The funds for which we provided support typically invested in high quality, short-term securities with a portfolio weighted-average maturity of 90 days or less, including securities issued by SIVs and senior debt holdings of financial services companies. Due to market disruptions, certain investments in SIVs and senior debt securities were downgraded by the ratings agencies and experienced a decline in fair value. We entered into capital commitments under which the Corporation provided cash to these funds in the event the net asset value per unit of a fund declined below certain thresholds. All capital commitments to these cash funds have been terminated. In 2009 and 2008, we recorded losses of \$195 million and \$1.1 billion related to these capital commitments.

Additionally, during 2009 and 2008, we purchased \$1.8 billion and \$1.7 billion of certain investments from the funds. As a result of these purchases, certain cash funds, including the Money Market Funds, managed within *Columbia* no longer have exposure to SIVs or other troubled assets. At December 31, 2009 and 2008, we held AFS debt securities with a fair value of \$902 million and \$698 million of which \$423 million and \$279 million were classified as nonperforming AFS debt securities and had \$171 million and \$272 million of related unrealized losses recorded in accumulated OCI. The decline in value of these securities was driven by the lack of market liquidity and the overall deterioration of the financial markets. These unrealized losses are recorded in accumulated OCI as we expect to recover the full principal amount of such investments and it is more-likely-than-not that we will not be required to sell the investments prior to recovery.

### **Other**

*Other* includes the results of the Retirement & Philanthropic Services business, the Corporation's approximately 34 percent economic ownership interest in BlackRock and other miscellaneous items. Our investment in BlackRock is accounted for under the equity method of accounting with our proportionate share of income or loss recorded in equity investment income.

Net income increased \$868 million to \$891 million compared to 2008. The increase was driven by higher noninterest income offset by higher noninterest expense and lower net interest income. Net interest income decreased \$406 million due to the funding cost on a management accounting basis for carrying the BlackRock investment. Noninterest income increased \$2.4 billion to \$2.6 billion due to the addition of the Retirement & Philanthropic Services business from Merrill Lynch and earnings from BlackRock which contributed \$1.3 billion during 2009, including the \$1.1 billion gain previously mentioned. Noninterest expense increased \$624 million to \$789 million primarily driven by the addition of the Retirement & Philanthropic Services business from Merrill Lynch.

All Other

(Dollars in millions)	2009			2008		
	Reported Basis <sup>(1)</sup>	Securitization Offset <sup>(2)</sup>	As Adjusted	Reported Basis <sup>(1)</sup>	Securitization Offset <sup>(2)</sup>	As Adjusted
Net interest income <sup>(3)</sup>	\$ (6,922)	\$ 9,250	\$ 2,328	\$ (8,019)	\$ 8,701	\$ 682
Noninterest income:						
Card income (loss)	(895)	2,034	1,139	2,164	(2,250)	(86)
Equity investment income	9,020	–	9,020	265	–	265
Gains on sales of debt securities	4,440	–	4,440	1,133	–	1,133
All other income (loss)	(6,735)	115	(6,620)	(711)	219	(492)
Total noninterest income	5,830	2,149	7,979	2,851	(2,031)	820
Total revenue, net of interest expense	(1,092)	11,399	10,307	(5,168)	6,670	1,502
Provision for credit losses	(3,431)	11,399	7,968	(3,769)	6,670	2,901
Merger and restructuring charges <sup>(4)</sup>	2,721	–	2,721	935	–	935
All other noninterest expense	1,997	–	1,997	189	–	189
Income (loss) before income taxes	(2,379)	–	(2,379)	(2,523)	–	(2,523)
Income tax benefit <sup>(3)</sup>	(2,857)	–	(2,857)	(1,283)	–	(1,283)
<b>Net income (loss)</b>	<b>\$ 478</b>	<b>\$ –</b>	<b>\$ 478</b>	<b>\$ (1,240)</b>	<b>\$ –</b>	<b>\$ (1,240)</b>

<sup>(1)</sup>Provision for credit losses represents the provision for credit losses in *All Other* combined with the *Global Card Services* securitization offset.

<sup>(2)</sup>The securitization offset on net interest income is on a funds transfer pricing methodology consistent with the way funding costs are allocated to the businesses.

<sup>(3)</sup>FTE basis

<sup>(4)</sup>For more information on merger and restructuring charges, see *Note 2 – Merger and Restructuring Activity* to the Consolidated Financial Statements.

(Dollars in millions)	2009	2008
<b>Balance Sheet</b>		
<b>Average</b>		
Total loans and leases <sup>(1)</sup>	\$155,561	\$135,789
Total assets <sup>(1, 2)</sup>	239,642	77,244
Total deposits	103,122	105,725
Allocated equity <sup>(3)</sup>	49,015	16,563
<b>Year end</b>		
Total loans and leases <sup>(1)</sup>	\$152,944	\$136,163
Total assets <sup>(1, 2)</sup>	137,382	79,420
Total deposits	78,618	86,888

<sup>(1)</sup>Loan amounts are net of the securitization offset of \$98.5 billion and \$104.4 billion for 2009 and 2008 and \$89.7 billion and \$101.0 billion at December 31, 2009 and 2008.

<sup>(2)</sup>Includes elimination of segments' excess asset allocations to match liabilities (i.e., deposits) of \$511.0 billion and \$413.1 billion for 2009 and 2008 and \$561.6 billion and \$439.2 billion at December 31, 2009 and 2008.

<sup>(3)</sup>Increase in allocated equity was due to capital raises during 2009.

*Global Card Services* is reported on a managed basis which includes a securitization impact adjustment which has the effect of assuming that loans that have been securitized were not sold and presents these loans in a manner similar to the way loans that have not been sold are presented. *All Other's* results include a corresponding securitization offset which removes the impact of these securitized loans in order to present the consolidated results on a GAAP basis (i.e., held basis). See the *Global Card Services* section beginning on page 29 for information on the *Global Card Services* managed results. The following *All Other* discussion focuses on the results on an as adjusted basis excluding the securitization offset. In addition to the securitization offset discussed above, *All Other* includes our *Equity Investments* businesses and *Other*.

*Equity Investments* includes Global Principal Investments, Corporate Investments and Strategic Investments. On January 1, 2009, Global

Principal Investments added Merrill Lynch's principal investments. The combined business is comprised of a diversified portfolio of investments in private equity, real estate and other alternative investments. These investments are made either directly in a company or held through a fund with related income recorded in equity investment income. Global Principal Investments has unfunded equity commitments amounting to \$2.5 billion at December 31, 2009 related to certain of these investments. For more information on these commitments, see *Note 14 – Commitments and Contingencies* to the Consolidated Financial Statements.

Corporate Investments primarily includes investments in publicly traded debt and equity securities and funds which are accounted for as AFS marketable equity securities. Strategic Investments includes investments of \$9.2 billion in CCB, \$5.4 billion in Itaú Unibanco Holding S.A. (Itaú Unibanco), \$2.5 billion in Grupo Financiero Santander, S.A. (Santander) and other investments. Our shares of Itaú Unibanco are accounted for as AFS marketable equity securities. Our investment in Santander is accounted for under the equity method of accounting.

In 2009, we sold 19.1 billion common shares representing our entire initial investment in CCB for \$10.1 billion, resulting in a pre-tax gain of \$7.3 billion. During 2008, under the terms of the CCB purchase option, we increased our ownership by purchasing approximately 25.6 billion common shares for \$9.2 billion. We continue to hold the shares purchased in 2008.

These shares are accounted for at cost, are recorded in other assets and are non-transferable until August 2011. We remain a significant shareholder in CCB with an approximate 11 percent ownership interest and intend to continue the important long-term strategic alliance with CCB originally entered into in 2005. As part of this alliance, we expect to continue to provide advice and assistance to CCB.

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The following table presents the components of *All Other's* equity investment income and reconciliation to the total consolidated equity investment income for 2009 and 2008 and also *All Other's* equity investments at December 31, 2009 and 2008.

Equity Investment Income		
(Dollars in millions)	2009	2008
Global Principal Investments	\$ 1,222	\$ (84)
Corporate Investments	(88)	(520)
Strategic and other investments	7,886	869
Total equity investment income included in <i>All Other</i>	9,020	265
Total equity investment income included in the business segments	994	274
<b>Total consolidated equity investment income</b>	<b>\$10,014</b>	<b>\$ 539</b>

## Equity Investments

	December 31	
	2009	2008
Global Principal Investments	\$14,071	\$ 3,812
Corporate Investments	2,731	2,583
Strategic and other investments	17,860	25,027
<b>Total equity investments included in All Other</b>	<b>\$34,662</b>	<b>\$31,422</b>

*Other* includes the residential mortgage portfolio associated with ALM activities, the residual impact of the cost allocation processes, merger and restructuring charges, intersegment eliminations and the results of certain businesses that are expected to be or have been sold or are in the process of being liquidated. *Other* also includes certain amounts associated with ALM activities, including the residual impact of funds transfer pricing allocation methodologies, amounts associated with the change in the value of derivatives used as economic hedges of interest rate and foreign exchange rate fluctuations, impact of foreign exchange rate fluctuations related to revaluation of foreign currency-denominated debt, fair value adjustments on certain structured notes, certain gains (losses) on sales of whole mortgage loans and gains (losses) on sales of debt securities. In addition, *Other* includes adjustments to net interest income and income tax expense to remove the FTE effect of items (primarily low-income housing tax credits) that are reported on a FTE basis in the business segments. *Other* also includes a trust services business which is a client-focused business providing trustee services and fund administration to various financial services companies.

First Republic results are also included in *Other*. First Republic, acquired as part of the Merrill Lynch acquisition, provides personalized, relationship-based banking services including private banking, private business banking, real estate lending, trust, brokerage and investment management. First Republic is a stand-alone bank that operates primarily on the west coast and in the northeast and caters to high-end customers. On October 21, 2009, we reached an agreement to sell First Republic to a number of investors, led by First Republic's existing management, Colony Capital, LLC and General Atlantic, LLC. The transaction is expected to close in the second quarter of 2010 subject to regulatory approval.

*All Other* recorded net income of \$478 million in 2009 compared to a net loss of \$1.2 billion in 2008 as higher total revenue driven by increases in noninterest income, net interest income and an income tax benefit were partially offset by increased provision for credit losses, merger and restructuring charges and all other noninterest expense.

Net interest income increased \$1.6 billion to \$2.3 billion primarily due to unallocated net interest income related to increased liquidity driven in

part by capital raises during 2009 and the addition of First Republic in 2009.

Noninterest income increased \$7.2 billion to \$8.0 billion driven by higher equity investment income of \$8.8 billion, increased gains on sales of debt securities of \$3.3 billion and increased card income of \$1.2 billion. These items were partially offset by a decrease in all other income of \$6.1 billion. The increase in equity investment income was driven by a \$7.3 billion gain on the sale of a portion of our CCB investment and positive valuation adjustments on public and private investments within Global Principal Investments. The decrease in all other income was driven by the \$4.9 billion negative credit valuation adjustments on certain Merrill Lynch structured notes due to an improvement in credit spreads during 2009. In addition, we recorded other-than-temporary impairments of \$1.6 billion related to non-agency CMOs included in the ALM debt securities portfolio during the year.

Provision for credit losses increased \$5.1 billion to \$8.0 billion. This increase was primarily due to higher credit costs related to our ALM residential mortgage portfolio reflecting deterioration in the housing markets and the impacts of a weak economy.

Merger and restructuring charges increased \$1.8 billion to \$2.7 billion due to the Merrill Lynch and Countrywide acquisitions. The Merrill Lynch acquisition was accounted for in accordance with new accounting guidance for business combinations effective on January 1, 2009 requiring that acquisition-related transaction and restructuring costs be charged to expense. Previously these costs were recorded as an adjustment to goodwill. This change in accounting drove a portion of the increase. We recorded \$1.8 billion of merger and restructuring charges during 2009 related to the Merrill Lynch acquisition, the majority of which related to severance and employee-related charges. The remaining merger and restructuring charges related to Countrywide and ABN AMRO North America Holding Company, parent of LaSalle Bank Corporation (LaSalle). For additional information on merger and restructuring charges and systems integrations, see *Note 2 – Merger and Restructuring Activity* to the Consolidated Financial Statements. All other noninterest expense increased \$1.8 billion to \$2.0 billion due to higher personnel costs and a \$425 million charge to pay the U.S. government to terminate its asset guarantee term sheet.

Income tax benefit in 2009 increased \$1.6 billion primarily as a result of the release of a portion of a valuation allowance that was provided for an acquired capital loss carryforward.

## Obligations and Commitments

We have contractual obligations to make future payments on debt and lease agreements. Additionally, in the normal course of business, we enter into contractual arrangements whereby we commit to future purchases of products or services from unaffiliated parties. Obligations that are legally binding agreements whereby we agree to purchase products or services with a specific minimum quantity defined at a fixed, minimum or variable price over a specified period of time are defined as purchase obligations. Included in purchase obligations are commitments to purchase loans of \$9.5 billion and vendor contracts of \$9.1 billion. The most significant vendor contracts include communication services, processing services and software contracts. Other long-term liabilities include our contractual funding obligations related to the Qualified Pension Plans, Nonqualified Pension Plans and Postretirement Health and Life Plans (the Plans). Obligations to the Plans are based on the current and projected obligations of the Plans, performance of the Plans' assets and any participant contributions, if applicable. During 2009 and 2008, we contributed \$414 million and \$1.6 billion to the Plans, and we expect to make at least \$346 million of contributions during 2010.

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Table 9 presents total long-term debt and other obligations at December 31, 2009.

**Table 9 Long-term Debt and Other Obligations**

	December 31, 2009				Total
	Due in 1 Year or Less	Due after 1 Year through 3 Years	Due after 3 Years through 5 Years	Due after 5 Years	
(Dollars in millions)					
Long-term debt and capital leases	\$ 99,144	\$ 124,054	\$ 72,103	\$143,220	\$438,521
Operating lease obligations	3,143	5,072	3,355	8,143	19,713
Purchase obligations	11,957	3,667	1,627	2,119	19,370
Other long-term liabilities	610	1,097	848	1,464	4,019
<b>Total long-term debt and other obligations</b>	<b>\$ 114,854</b>	<b>\$ 133,890</b>	<b>\$ 77,933</b>	<b>\$154,946</b>	<b>\$481,623</b>

Debt, lease, equity and other obligations are more fully discussed in *Note 13 – Long-term Debt* and *Note 14 – Commitments and Contingencies* to the Consolidated Financial Statements. The Plans are more fully discussed in *Note 17 – Employee Benefit Plans* to the Consolidated Financial Statements.

We enter into commitments to extend credit such as loan commitments, standby letters of credit (SBLCs) and commercial letters of credit to meet the financing needs of our customers. For a summary of the total unfunded, or off-balance sheet, credit extension commitment amounts by expiration date, see the table in *Note 14 – Commitments and Contingencies* to the Consolidated Financial Statements.

### Regulatory Initiatives

On November 12, 2009, the Federal Reserve issued the final rule related to changes to Regulation E and on May 22, 2009, the CARD Act was signed into law. For more information on the impact of these new regulations, see *Regulatory Overview* on page 17.

In December 2009, the Basel Committee on Banking Supervision released consultative documents on both capital and liquidity. In addition, we will begin Basel II parallel implementation during the second quarter of 2010. For more information, see *Basel Regulatory Capital Requirements* on page 52.

On January 21, 2010, the Federal Reserve, Office of the Comptroller of the Currency, FDIC and Office of Thrift Supervision (collectively, joint agencies) issued a final rule regarding risk-based capital and the impact of adoption of new consolidation rules issued by the FASB. The final rule eliminates the exclusion of certain asset-backed commercial paper (ABCP) program assets from risk-weighted assets and provides a reservation of authority to permit the joint agencies to require banks to treat structures that are not consolidated under the accounting standards as if they were consolidated for risk-based capital purposes commensurate with the risk relationship of the bank to the structure. In addition, the final rule allows for an optional delay and phase-in for a maximum of one year for the effect on risk-weighted assets and the regulatory limit on the inclusion of the allowance for loan and lease losses in Tier 2 capital related to the assets that must be consolidated as a result of the accounting change. The transitional relief does not apply to the leverage ratio or to assets in VIEs to which a bank provides implicit support. We have elected to forgo the phase-in period, and accordingly, we consolidated the amounts for regulatory capital purposes as of January 1, 2010. For more information on the impact of this guidance, see *Impact of Adopting New Accounting Guidance on Consolidation* on page 52.

On December 14, 2009, we announced our intention to increase lending to small- and medium-sized businesses to approximately \$21 billion in 2010 compared to approximately \$16 billion in 2009. This announcement is consistent with the U.S. Treasury's initiative, announced as part of the Financial Stability Plan on February 2, 2009, to help increase small

business owners' access to credit. As part of the initiative, the U.S. Treasury began making direct purchases of up to \$15 billion of certain securities backed by Small Business Administration (SBA) loans to improve liquidity in the credit markets and purchasing new securities to ensure that financial institutions feel confident in extending new loans to small businesses. The program also temporarily raises guarantees to up to 90 percent in the SBA's loan program and temporarily eliminates certain SBA loan fees. We continue to lend to creditworthy small business customers through small business credit cards, loans and lines of credit products.

In response to the economic downturn, the FDIC implemented the Temporary Liquidity Guarantee Program (TLGP) to strengthen confidence and encourage liquidity in the banking system by allowing the FDIC to guarantee senior unsecured debt (e.g., promissory notes, unsubordinated unsecured notes and commercial paper) up to prescribed limits, issued by participating entities beginning on October 14, 2008, and continuing through October 31, 2009. We participated in this program; however, as announced in September 2009, due to improved market liquidity and our ability to issue debt without the FDIC guarantee, we, with the FDIC's agreement, exited the program and have stopped issuing FDIC-guaranteed debt. At December 31, 2009, we still had FDIC-guaranteed debt outstanding issued under the TLGP of \$44.3 billion. The TLGP also offered the Transaction Account Guarantee Program (TAGP) that guaranteed noninterest-bearing deposit accounts held at participating FDIC-insured institutions on balances in excess of \$250,000. We elected to opt out of the six-month extension of the TAGP which extends the program to June 30, 2010. We exited the TAGP effective December 31, 2009.

On September 21, 2009, the Corporation reached an agreement to terminate its term sheet with the U.S. government under which the U.S. government agreed in principle to provide protection against the possibility of unusually large losses on a pool of the Corporation's financial instruments that were acquired from Merrill Lynch. In connection with the termination of the term sheet, the Corporation paid a total of \$425 million to the U.S. government to be allocated among the U.S. Treasury, the Federal Reserve and the FDIC.

In addition to exiting the TARP as discussed on page 18, terminating the U.S. Government's asset guarantee term sheet and exiting the TLGP, including the TAGP, we have exited or ceased participation in market disruption liquidity programs created by the U.S. government in response to the economic downturn of 2008. We have exited or repaid borrowings under the Term Auction Facility, U.S. Treasury Temporary Liquidity Guarantee Program for Money Market Funds, ABCP Money Market Fund Liquidity Facility, Commercial Paper Federal Funding Facility, Money Market Investor Funding Facility, Term Securities Lending Facility and Primary Dealer Credit Facility.

On November 17, 2009, the FDIC issued a final rule that required insured institutions to prepay on December 30, 2009 their estimated

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quarterly risk-based assessments for the fourth quarter of 2009 and for all of 2010, 2011 and 2012. For the fourth quarter of 2009 and for all of 2010, the prepaid assessment rate was based on each institution's total base assessment rate for the third quarter of 2009, modified to assume that the assessment rate in effect on September 30, 2009 had been in effect for the entire third quarter of 2009. The prepaid assessment rates for 2011 and 2012 are equal to the modified third quarter 2009 total base assessment rate plus three bps adjusted quarterly for an estimated five percent annual growth rate in the assessment base through the end of 2012. As the prepayment related to future periods, it was recorded in prepaid assets for financial reporting purposes and will be recognized as expense over the coverage period.

On May 22, 2009, the FDIC adopted a rule designed to replenish the deposit insurance fund. This rule established a special assessment of five bps on each FDIC-insured depository institution's assets minus its Tier 1 capital with a maximum assessment not to exceed 10 bps of an institution's domestic deposits. This special assessment was calculated based on asset levels at June 30, 2009, and was collected on September 30, 2009. The Corporation recorded a net charge of \$724 million in 2009 in connection with this assessment. Additionally, beginning April 1, 2009, the FDIC increased fees on deposits based on a revised risk-weighted methodology which increased the base assessment rates.

Pursuant to the Emergency Economic Stabilization Act of 2008 (EESA), the U.S. Treasury announced the creation of the Financial Stability Plan. This plan outlined a series of key initiatives including a new Capital Assistance Program (CAP) to help ensure that banking institutions have sufficient capital. We, as well as several other large financial institutions, are subject to the Supervisory Capital Assessment Program (SCAP) conducted by federal regulators. The objective of the SCAP is to assess losses that could occur under certain economic scenarios, including economic conditions more severe than anticipated. As a result of the SCAP, in May 2009, federal regulators determined that the Corporation required an additional \$33.9 billion of Tier 1 common capital to sustain more severe economic circumstances assuming a more prolonged and deeper recession over a two-year period than the majority of both private and government economists projected. We achieved the increased capital requirement during the first half of 2009 through strategic transactions that increased common capital, including the expected reductions in preferred dividends and related reduction in deferred tax asset disallowances, by approximately \$39.7 billion and significantly exceeded the SCAP buffer. This Tier 1 common capital increase resulted from the exchange of approximately \$14.8 billion aggregate liquidation preference of non-government preferred shares into approximately 1.0 billion common shares, an at-the-market offering of 1.25 billion common shares for \$13.5 billion, a \$4.4 billion benefit (including associated tax effects) related to the sale of shares of CCB, a \$3.2 billion benefit (net of tax and including an approximate \$800 million reduction in goodwill and intangibles) related to the gain from the contribution of our merchant processing business to a joint venture, \$1.6 billion due to reduced actual and forecasted preferred dividends throughout 2009 and 2010 related to the exchange of preferred for common shares and a \$2.2 billion reduction in the deferred tax asset disallowance for Tier 1 common capital from the preceding items.

On March 4, 2009, the U.S. Treasury provided details related to the \$75 billion Making Home Affordable program (MHA). The MHA is focused on reducing the number of foreclosures and making it easier for customers to refinance loans. The MHA consists of the Home Affordable Modification Program (HAMP) which provides guidelines on first lien loan modifications, and the Home Affordable Refinance Program (HARP) which provides guidelines for loan refinancing. The HAMP is designed to help at-risk homeowners avoid foreclosure by reducing payments. This program

provides incentives to lenders to modify all eligible loans that fall under the guidelines of this program. The HARP is available to approximately four to five million homeowners who have a proven payment history on an existing mortgage owned by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC). The HARP is designed to help eligible homeowners refinance their mortgage loans to take advantage of current lower mortgage rates or to refinance adjustable-rate mortgages (ARM) into more stable fixed-rate mortgages.

As part of the MHA program, on April 28, 2009, the U.S. government announced intentions to create the second lien modification program (2MP) that will be designed to reduce the monthly payments on qualifying home equity loans and lines of credit under certain conditions, including completion of a HAMP modification on the first mortgage on the property. This program will provide incentives to lenders to modify all eligible loans that fall under the guidelines of this program. On January 26, 2010, we formally announced that we will participate in the 2MP once program details are finalized. We will modify eligible second liens regardless of whether the MHA modified first lien is serviced by Bank of America or another participating servicer.

Another addition to the HAMP is the recently announced Home Affordable Foreclosure Alternatives (HAFA) program to assist borrowers with non-retention options instead of foreclosure. The HAFA program provides incentives to lenders to assist all eligible borrowers that fall under the guidelines of this program. Our first goal is to work with the borrower to determine if a loan modification or other homeownership retention solution is available before pursuing non-retention options such as short sales. Short sales are an important option for homeowners who are facing financial difficulty and do not have a viable option to remain in the home. HAFA's short sale guidelines are designed to streamline and standardize the process and will be compatible with Bank of America's new cooperative short sale program.

As of January 2010, approximately 220,000 Bank of America customers were already in a trial-period modification under the MHA program. We will continue to help our customers address financial challenges through these government programs and our own home retention programs.

## Managing Risk

### Overview

The Corporation's risk management infrastructure is evolving to meet the challenges posed by the increased complexity of the financial services industry and markets, by our increased size and global footprint, and by the rapid and significant financial crisis of the past two years. We have redefined our risk framework, articulated a risk appetite approved by the Board of Directors (the Board), and begun the roll out and implementation of our risk plan. While many of these processes, and roles and responsibilities continue to evolve and mature, we will ensure that we continue to enhance our risk management process with a focus on clarity of roles and accountabilities, escalation of issues, aggregation of risk and data across the enterprise, and effective governance characterized by clarity and transparency.

Given our wide range of business activities as well as the competitive dynamics, the regulatory environment and the geographic span of such activities, risk taking is an inherent activity for the Corporation. Consequently, we take a comprehensive approach to risk management. Risk management planning is fully integrated with strategic, financial and customer/client planning so that goals and responsibilities are aligned across the organization. Risk is managed in a systematic manner by focusing on the Corporation as a whole and managing risk across the enterprise and within individual business units, products, services and transactions. We maintain a governance structure that delineates the



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responsibilities for risk management activities, as well as governance and the oversight of those activities, by executive management and the Board.

Economic capital is assigned to each business segment using a risk-adjusted methodology incorporating each segment's stand-alone credit, market, interest rate and operational risk components, and is used to measure risk-adjusted returns. Executive management assesses, and the Board oversees, the risk-adjusted returns of each business through review and approval of strategic and financial operating plans. By allocating economic capital to and establishing a risk appetite for a line of business, we effectively manage the ability to take on risk. Businesses operate within their credit, market, compliance, and operational risk standards and limits in order to adhere to the risk appetite. These limits are based on analyses of risk and reward in each line of business, and executive management is responsible for tracking and reporting performance measurements as well as any exceptions to guidelines or limits. The Board monitors financial performance, execution of the strategic and financial operating plans, compliance with the risk appetite and the adequacy of internal controls through its committees.

Our business exposes us to strategic, credit, market, liquidity, compliance, operational and reputational risk. Strategic risk is the risk that adverse business decisions, ineffective or inappropriate business plans, or failure to respond to changes in the competitive environment, business cycles, customer preferences, product obsolescence, execution and/or other intrinsic risks of business will impact our ability to meet our objectives. Credit risk is the risk of loss arising from a borrower's or counterparty's inability to meet its obligations. Market risk is the risk that values of assets and liabilities or revenues will be adversely affected by changes in market conditions such as interest rate movements. Liquidity risk is the inability to accommodate liability maturities and deposit withdrawals, fund asset growth and meet contractual obligations through unconstrained access to funding at reasonable market rates. Compliance risk is the risk posed by the failure to manage regulatory, legal and ethical issues that could result in monetary damages, losses or harm to our reputation or image. Operational risk is the risk of loss resulting from inadequate or failed internal processes, people and systems or external events. Reputational risk, the risk that negative publicity will adversely affect the Corporation, is managed as a natural part of managing the other six types of risk. The following sections, Strategic Risk Management on page 47, Liquidity Risk and Capital Management beginning on page 47, Credit Risk Management beginning on page 54, Market Risk Management beginning on page 79, Compliance Risk Management on page 86, and Operational Risk Management beginning on page 86, address in more detail the specific procedures, measures and analyses of the major categories of risk that the Corporation manages.

On October 28, 2009, the Board approved the Risk Framework and Risk Appetite Statement for the Corporation. The Risk Framework is designed to be used by our associates to understand risk management activities, including their individual roles and accountabilities. The Risk Framework defines how risk management is integrated into our core business processes, and it defines the risk management governance structure, including management's involvement. The risk management responsibilities of the lines of business, Governance and Control functions, and Corporate Audit are also clearly defined. The Risk Framework reflects how the Board-approved risk appetite influences business and risk strategy. The management process (i.e., identify and measure risk, mitigate and control risk, monitor and test risk, and report and review risk) was enhanced for execution across all business activities. The Risk Framework supports the accountability of the Corporation and its associates to ensure the integrity of assets and the quality of earnings. The Risk Appetite Statement defines the parameters under which we will take

risk to maximize our long-term results by ensuring the integrity of our assets and the quality of our earnings. Our intent is for our risk appetite to reflect a "through the cycle" view which will be reviewed and assessed annually.

### **Risk Management Processes and Methods**

To ensure that our corporate goals and objectives, risk appetite, and business and risk strategies are achieved, we utilize a risk management process that is applied in executing all business activities. All functions and roles fall into one of three categories where risk must be managed. These are lines of business, Governance and Control (Global Risk Management or other support groups) and Corporate Audit.

The lines of business are responsible for identifying and managing all existing, reputational and emerging risks in their business units, since this is where most of our risk-taking occurs. Line of business management makes and executes the business plan and is closest to the changing nature of risks and, therefore, we believe is best able to implement procedures and controls that align to policies and limits. Risk self-assessments conducted by the business are used to identify risks and calibrate the severity of potential risk issues. These assessments are reviewed by the lines of business and executive management, including senior Risk executives. To the extent appropriate, the assessments are reviewed by the Board or its committees to ensure appropriate risk management and oversight, and to identify enterprise-wide issues. Our management processes, structures and policies aid us in complying with laws and regulations and provide clear lines for decision-making and accountability. Wherever practical, we attempt to house decision-making authority as close to the transaction as possible while retaining supervisory control functions from both inside and outside of the lines of business.

The Governance and Control functions include our Risk Management, Finance, Treasury, Technology and Operations, Human Resources, and Legal functions. These groups are independent of the lines of business and are organized with both line of business-aligned and enterprise-wide functions. The Governance and Control functions are accountable for setting policies, standards and limits according to the Risk Appetite Statement, providing risk reporting and monitoring, and ensuring compliance. For example, in Global Risk Management, a senior risk executive is assigned to each of the lines of business and is responsible for the oversight of all the risks associated with that line of business and ensuring compliance with policies, standards and limits. Enterprise-level risk executives have responsibility to develop and implement the framework for policies and practices to assess and manage enterprise-wide credit, market, compliance and operational risks.

Corporate Audit provides an independent assessment of our management and internal control systems through testing of key processes and controls across the organization. Corporate Audit activities are designed to provide reasonable assurance that resources are adequately protected; significant financial, managerial and operating information is materially complete, accurate and reliable; and employees' actions are in compliance with the Corporation's policies, standards, procedures, and applicable laws and regulations.

We use a risk management process, applied across the execution of all business activities, that is designed to identify and measure, mitigate and control, monitor and test, and report and review risks. This process enables us to review risks in an integrated and comprehensive manner and make strategic and business decisions based on that comprehensive view. Corporate goals and objectives and risk appetite are established by executive management, approved by the Board, and are inputs to setting business and risk strategy which guide the execution of business activities. Governance, continuous feedback, and independent testing and validation provide structured controls, reporting and audit of the execution

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of risk processes and business activities. Examples of tools, methods and processes used include: self-assessments conducted by the lines of business in concert with independent risk assessments by Governance and Control (part of "identify and measure"); a system of controls and supervision which provides assurance that associates act in accordance with laws, regulations, policies and procedures (part of "mitigate and control"); independent testing of control and mitigation plans by Credit Review and Corporate Audit (part of "monitor and test"); and a summary risk report which includes key risk metrics that measure the performance of the Corporation against risk limits and the Risk Appetite Statement (part of "report and review").

The formal processes used to manage risk represent only one portion of our overall risk management process. Corporate culture and the actions of our associates are also critical to effective risk management. Through our Code of Ethics, we set a high standard for our associates. The Code of Ethics provides a framework for all of our associates to conduct themselves with the highest integrity in the delivery of our products or services to our customers. We instill a risk-conscious culture through communications, training, policies, procedures, and organizational roles and responsibilities. Additionally, we continue to strengthen the linkage between the associate performance management process and individual compensation to encourage associates to work toward enterprise-wide risk goals.

### **Board Oversight**

The Board oversees management of the Corporation's businesses and affairs. In its oversight of the Corporation, the Board's goal is to set the tone for the highest ethical standards and performance of our management, associates and the Corporation as a whole. The Board strongly believes that good corporate governance practices are important for successful business performance. Our corporate governance practices are designed to align the interests of the Board and management with those of our stockholders and to promote honesty and integrity throughout the Corporation. Over the past year, we have enhanced our corporate governance practices in many important ways, and we continue to monitor best practices to promote a high level of performance from the Board, management and our associates. The Board has adopted Corporate Governance Guidelines that embody long-standing practices of the Corporation as well as current corporate governance best practices.

In 2009, the Board established a special Board committee with five non-management members (the "Special Governance Committee") to review and recommend changes in all aspects of the Board's activities. In recognition of the increased complexity of our company following the major acquisitions of Merrill Lynch and Countrywide, and the challenges of the current business environment, the Board has strengthened its membership by appointing new directors who are independent of management and demonstrate significant banking, financial and investment banking expertise. In addition, the Board has assessed and further developed its structures and processes through which it fulfills its oversight role by the following: modifying committee membership and leadership to best leverage the abilities and backgrounds of the Board members; recasting the Asset Quality Committee as a more targeted and focused Credit Committee and establishing the Enterprise Risk Committee such that these two committees, together with the Audit Committee, work in complement to ensure that key aspects of risk, capital and liquidity management are specifically overseen by committees with clear and affirmative oversight responsibilities set forth in their committee charters; working with management and outside regulatory experts to redesign

management reports to the Board and committees; periodically reviewing the composition of the Board in light of the Corporation's business and structure to identify and nominate director candidates who possess relevant experience, qualifications, attributes and skills to the Board; and enhancing the director orientation process to include, among other changes, increased interaction with executive management and increased focus on key risks.

At the Corporation, the Audit, Credit and Enterprise Risk Committees are charged with a majority of the risk oversight responsibilities on behalf of the Board. In 2009, as noted above, the Board recast the Asset Quality Committee as a more targeted and focused Credit Committee and established a new Enterprise Risk Committee. The Credit Committee oversees, among other things, the management of our credit exposures on an enterprise-wide basis, our response to trends affecting those exposures, the adequacy of the allowance for credit losses and our credit related policies. The Enterprise Risk Committee, among other things, oversees our management of and policies and procedures with respect to material risks on an enterprise-wide basis, including market risk, interest rate risk, liquidity risk and reputational risk. It also oversees our capital management and liquidity planning. The Audit Committee retains oversight responsibility for operational risk, the integrity of our consolidated financial statements, compliance, legal risk and overall policies and practices relating to risk management. In addition to the three risk oversight committees, the Compensation and Benefits Committee oversees the Corporation's compensation practices in order that they do not encourage unnecessary and excessive risk taking by our associates.

The Audit, Credit and Enterprise Risk Committees work in tandem to provide enterprise-wide oversight of the Corporation's management and handling of risk. Each of these three committees reports regularly to the Board on risk-related matters within its responsibilities and together this provides the Board with integrated insight about our management of strategic, credit, market, liquidity, compliance, operational and reputational risks.

Starting in 2009, the Board formalized its process of approving the Corporation's articulation of its risk appetite, which is used internally to help the directors and management understand more clearly the Corporation's tolerance for risk in each of the major risk categories, the way those risks are measured and the key controls available that influence the Corporation's level of risk-taking. The Board intends to undertake this process annually going forward. The Board also approves, at a high level, following proposal by management, the Corporation's framework for managing risk.

At meetings of the Board and the Audit, Credit and Enterprise Risk Committees, directors receive updates from management regarding enterprise risk management, including our performance against the identified risk appetite. The Chief Risk Officer, who is responsible for instituting risk management practices that are consistent with our overall business strategy and risk appetite, and the General Counsel, who manages legal risk, both report directly to the Chief Executive Officer and lead management's risk and legal risk discussions at Board and committee meetings. In addition, the Corporate General Auditor, who is responsible for assessing the company's control environment over significant financial, managerial, and operating information, is independent of management and reports directly to the Audit Committee. The Corporate General Auditor also administratively reports to our Chief Executive Officer. Outside of formal meetings, Board members have regular access to senior executives, including the Chief Risk Officer and the General Counsel.

## Strategic Risk Management

Strategic risk is embedded in every line of business and is part of the other major risk categories (credit, market, liquidity, compliance and operational). It is the risk that results from adverse business decisions, ineffective or inappropriate business plans, or failure to respond to changes in the competitive environment, business cycles, customer preferences, product obsolescence, regulatory environment, business strategy execution, and/or other inherent risks of the business including reputational risk. In the financial services industry, strategic risk is high due to changing customer and regulatory environments. The Corporation's appetite for strategic risk is continually assessed within the context of the strategic plan, with strategic risks selectively and carefully taken to maintain relevance in the evolving marketplace. Strategic risk is managed in the context of our overall financial condition and assessed, managed and acted on by the Chief Executive Officer and executive management team. Significant strategic actions, such as material acquisitions or capital actions, are reviewed and approved by the Board.

Using a plan developed by management, executive management and the Board approve a strategic plan every two to three years. Annually, executive management develops a financial operating plan and the Board reviews and approves the plan. Executive management, with Board oversight, ensures that the plans are consistent with the Corporation's strategic plan, core operating tenets and risk appetite. The following are assessed in their reviews: forecasted earnings and returns on capital; the current risk profile and changes required to support the plan; current capital and liquidity requirements and changes required to support the plan; stress testing results; and other qualitative factors such as market growth rates and peer analysis. Executive management, with Board oversight, performs similar analyses throughout the year, and will define changes to the financial forecast or the risk, capital or liquidity positions as deemed appropriate to balance and optimize between achieving the targeted risk appetite and shareholder returns and maintaining the targeted financial strength.

We use proprietary models to measure the capital requirements for credit, country, market, operational and strategic risks. The economic capital assigned to each line of business is based on its unique risk exposures. With oversight by the Board, executive management assesses the risk-adjusted returns of each business in approving strategic and financial operating plans. The businesses use economic capital to define business strategies, price products and transactions, and evaluate client profitability.

## Liquidity Risk and Capital Management

### Funding and Liquidity Risk Management

We define liquidity risk as the potential inability to meet our contractual and contingent financial obligations, on- or off-balance sheet, as they come due. Our primary liquidity objective is to ensure adequate funding for our businesses throughout market cycles, including during periods of financial stress. To achieve that objective we analyze and monitor our liquidity risk, maintain excess liquidity and access diverse funding sources including our stable deposit base. We define excess liquidity as readily available assets, limited to cash and high-quality liquid unencumbered securities, that we can use to meet our funding requirements as those obligations arise.

Global funding and liquidity risk management activities are centralized within Corporate Treasury. We believe that a centralized approach to funding and liquidity risk management enhances our ability to monitor liquidity requirements, maximizes access to funding sources, minimizes borrowing costs and facilitates timely responses to liquidity events.

The Board approves the Corporation's liquidity policy and contingency funding plan, including establishing liquidity risk tolerance levels. The Asset and Liability Market Risk Committee (ALMRC), in conjunction with the Board and its committees, monitors our liquidity position and reviews the impact of strategic decisions on our liquidity. ALMRC is responsible for managing liquidity risks and ensuring exposures remain within the established tolerance levels. ALMRC delegates additional oversight responsibilities to the Risk Oversight Committee (ROC), which reports to ALMRC. ROC reviews and monitors our liquidity position, cash flow forecasts, stress testing scenarios and results, and implements our liquidity limits and guidelines. For more information, refer to Board Oversight on page 46.

Under this governance framework, we have developed the following funding and liquidity risk management practices:

- Maintain excess liquidity at the parent company and selected subsidiaries, including our bank and broker/dealer subsidiaries
- Determine what amounts of excess liquidity are appropriate for these entities based on analysis of debt maturities and other potential cash outflows, including those that we may experience during stressed market conditions
- Diversify funding sources, considering our asset profile and legal entity structure
- Perform contingency planning

### Global Excess Liquidity Sources and Other Unencumbered Assets

We maintain excess liquidity available to the parent company and selected subsidiaries in the form of cash and high-quality, liquid, unencumbered securities that together serve as our primary means of liquidity risk mitigation. We call these assets our "Global Excess Liquidity Sources," and we limit the composition of high-quality, liquid, unencumbered securities to U.S. government securities, U.S. agency securities, U.S. agency MBS and a select group of non-U.S. government securities. We believe we can quickly obtain cash for these securities, even in stressed market conditions, through repurchase agreements or outright sales. We hold these assets in entities that allow us to meet the liquidity requirements of our global businesses and we consider the impact of potential regulatory, tax, legal and other restrictions that could limit the transferability of funds among entities.

Our Global Excess Liquidity Sources totaled \$214 billion at December 31, 2009 and were maintained as presented in the table below.

**Table 10 Global Excess Liquidity Sources**

December 31, 2009

(Dollars in billions)	
Parent company	\$ 99
Bank subsidiaries	89
Broker/dealers	26
<b>Total global excess liquidity sources</b>	<b>\$214</b>

As noted above, the excess liquidity available to the parent company is held in cash and high-quality, liquid, unencumbered securities and totaled \$99 billion at December 31, 2009. Typically, parent company cash is deposited overnight with Bank of America, N.A.

Our bank subsidiaries' excess liquidity sources at December 31, 2009 consisted of \$89 billion in cash on deposit at the Federal Reserve and high-quality, liquid, unencumbered securities. These amounts are distinct from the cash deposited by the parent company, as previously described. In addition to their excess liquidity sources, our bank sub - -

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subsidiaries hold significant amounts of other unencumbered securities that we believe they could also use to generate liquidity, such as investment grade ABS and municipal bonds. Another way our bank subsidiaries can generate incremental liquidity is by pledging a range of other unencumbered loans and securities to certain FHLBs and the Federal Reserve Discount Window. The cash we could have obtained at December 31, 2009 by borrowing against this pool of specifically identified eligible assets was approximately \$187 billion. We have established operational procedures to enable us to borrow against these assets, including regularly monitoring our total pool of eligible loan and securities collateral. Due to regulatory restrictions, liquidity generated by the bank subsidiaries may only be used to fund obligations within the bank subsidiaries and may not be transferred to the parent company or other nonbank subsidiaries.

Our broker/dealer subsidiaries' excess liquidity sources at December 31, 2009 consisted of \$26 billion in cash and high-quality, liquid, unencumbered securities. Our broker/dealers also held significant amounts of other unencumbered securities we believe they could utilize to generate additional liquidity, including investment grade corporate bonds, ABS and equities. Liquidity held in a broker/dealer subsidiary may only be available to meet the liquidity requirements of that entity and may not be transferred to the parent company or other subsidiaries.

### Time to Required Funding and Stress Modeling

We use a variety of metrics to determine the appropriate amounts of excess liquidity to maintain at the parent company and our bank and broker/dealer subsidiaries. The primary metric we use to evaluate the appropriate level of excess liquidity at the parent company is "Time to Required Funding." This debt coverage measure indicates the number of months that the parent company can continue to meet its unsecured contractual obligations as they come due using only its Global Excess Liquidity Sources without issuing any new debt or accessing any additional liquidity sources. We define unsecured contractual obligations for purposes of this metric as senior or subordinated debt maturities issued or guaranteed by Bank of America Corporation or Merrill Lynch & Co., Inc., including certain unsecured debt instruments, primarily structured notes, which we may be required to settle for cash prior to maturity. ALMRC has established a minimum target for "Time to Required Funding" of 21 months. "Time to Required Funding" was 25 months at December 31, 2009.

We also utilize liquidity stress models to assist us in determining the appropriate amounts of excess liquidity to maintain at the parent company and our bank and broker/dealer subsidiaries. We use these models to analyze our potential contractual and contingent cash outflows and liquidity requirements under a range of scenarios with varying levels of severity and time horizons. These scenarios incorporate market-wide and Corporation-specific events, including potential credit rating downgrades for the parent company and our subsidiaries. We consider and utilize scenarios based on historical experience, regulatory guidance, and both expected and unexpected future events.

We consider all sources of funds that we could access during each stress scenario and focus particularly on matching available sources with corresponding liquidity requirements by legal entity. We also use the stress modeling results to manage our asset-liability profile and establish limits and guidelines on certain funding sources and businesses.

### Diversified Funding Sources

We fund our assets primarily with a mix of deposits and secured and unsecured liabilities through a globally coordinated funding strategy. We

diversify our funding globally across products, programs, markets, currencies and investor bases.

We fund a substantial portion of our lending activities through our deposit base which was \$992 billion at December 31, 2009. Deposits are primarily generated by our *Deposits, Global Banking and GWIM* segments. These deposits are diversified by clients, product types and geography. Domestic deposits may be insured by the FDIC. We consider a substantial portion of our deposits to be a stable, low-cost and consistent source of funding. We believe this deposit funding is generally less sensitive to interest rate changes, market volatility or changes in our credit ratings than wholesale funding sources.

Certain consumer lending activities, primarily in our banking subsidiaries, may be funded through securitizations. Included in these consumer lending activities are the extension of mortgage, credit card, auto loans, home equity loans and lines of credit. If securitization markets are not available to us on favorable terms, we typically finance these loans with deposits or with wholesale borrowings. For additional information on securitizations see *Note 8 – Securitizations* to the Consolidated Financial Statements.

Our trading activities are primarily funded on a secured basis through repurchase and securities lending agreements. Due to the underlying collateral, we believe this financing is more cost-efficient and less sensitive to changes in our credit ratings than unsecured financing. Repurchase agreements are generally short-term and often occur overnight. Disruptions in secured financing markets for financial institutions have occurred in prior market cycles which resulted in adverse changes in terms or significant reductions in the availability of such financing. We manage the liquidity risks arising from secured funding by sourcing funding globally from a diverse group of counterparties, providing a range of securities collateral and pursuing longer durations when we finance lower-quality assets.

Unsecured debt, both short- and long-term, is also an important source of funding. We may issue unsecured debt through syndicated U.S. registered offerings, U.S. registered and unregistered medium-term note programs, non-U.S. medium-term note programs, non-U.S. private placements, U.S. and non-U.S. commercial paper and through other methods. We distribute a significant portion of our debt offerings through our retail and institutional sales forces to a large, diversified global investor base. Maintaining relationships with our investors is an important aspect of our funding strategy. We may also make markets in our debt instruments to provide liquidity for investors.

We issue the majority of our unsecured debt at the parent company and Bank of America, N.A. During 2009, we issued \$30.2 billion and \$10.5 billion of long-term senior unsecured debt at the parent company and Bank of America N.A. The primary benefits of this centralized financing strategy include greater control, reduced funding costs, wider name recognition by investors and greater flexibility to meet the variable funding requirements of subsidiaries. Where regulations, time zone differences, or other business considerations make parent company funding impractical, certain other subsidiaries may issue their own debt.

We issue unsecured debt in a variety of maturities and currencies to achieve cost-efficient funding and to maintain an appropriate maturity profile. While the cost and availability of unsecured funding may be negatively impacted by general market conditions or by matters specific to the financial services industry or Bank of America, we seek to mitigate refinancing risk by actively managing the amount of our borrowings that we anticipate will mature within any month or quarter.

At December 31, 2009, our long-term debt was issued in the currencies presented in the following table.

**Table 11 Long-term Debt By Major Currency**

December 31, 2009

(Dollars in millions)	
U.S. Dollar	\$281,692
Euros	99,917
Japanese Yen	19,903
British Pound	16,460
Australian Dollar	7,973
Canadian Dollar	4,894
Swiss Franc	2,666
Other	5,016
<b>Total long-term debt</b>	<b>\$438,521</b>

We use derivative transactions to manage the duration, interest rate and currency risks of our borrowings, considering the characteristics of the assets they are funding. For further details on our ALM activities, refer to Interest Rate Risk Management for Nontrading Activities beginning on page 83.

We also diversify our funding sources by issuing various types of debt instruments including structured notes. Structured notes are debt obligations that pay investors with returns linked to other debt or equity securities, indices, currencies or commodities. We typically hedge the returns we are obligated to pay on these notes with derivative positions and/or in the underlying instruments so that from a funding perspective, the cost is similar to our other unsecured long-term debt. We could be required to immediately settle certain structured note obligations for cash or other securities under certain circumstances, which we consider for liquidity planning purposes. We believe, however, that a portion of such borrowings will remain outstanding beyond the earliest put or redemption date. At December 31, 2009, we had outstanding structured notes of \$57 billion.

Substantially all of our senior and subordinated debt obligations contain no provisions that could trigger a requirement for an early repayment, require additional collateral support, result in changes to terms, accelerate maturity, or create additional financial obligations upon an adverse change in our credit ratings, financial ratios, earnings, cash flows or stock price.

The U.S. government and joint agencies have introduced various programs to stabilize and provide liquidity to the U.S. financial markets since 2007. We have participated in certain of these initiatives and we repaid our borrowings under U.S. government secured financing programs during 2009. We also participated in the FDIC's TLGP which allowed us to issue senior unsecured debt that it guaranteed in return for a fee based on the amount and maturity of the debt. We issued \$21.8 billion and \$19.9 billion of FDIC-guaranteed long-term debt in 2009 and 2008. We have also issued short-term notes under the program. At December 31, 2009, we had \$41.7 billion outstanding under the program. We no longer issue debt under this program and all of our debt issued under TLGP will mature by June 30, 2012. Under this program, our debt received the highest long-term ratings from the major credit ratings agencies which resulted in a lower total cost of issuance than if we had issued non-FDIC guaranteed long-term debt. The associated FDIC fee for the 2009 issuances was \$554 million and is being amortized into expense over the stated term of

the debt. For additional information on debt funding see *Note 13 – Long-term Debt* to the Consolidated Financial Statements.

**Contingency Planning**

The Corporation maintains contingency funding plans that outline our potential responses to liquidity stress events at various levels of severity. These policies and plans are based on stress scenarios and include potential funding strategies, communication and notification procedures that we would implement in the event we experienced stressed liquidity conditions. We periodically review and test the contingency funding plans to validate efficacy and assess readiness.

Our U.S. bank subsidiaries can access contingency funding through the Federal Reserve Discount Window. Certain non-U.S. subsidiaries have access to central bank facilities in the jurisdictions in which they operate. While we do not rely on these sources in our liquidity modeling, we maintain the policies, procedures and governance processes that would enable us to access these sources if necessary.

**Credit Ratings**

Our borrowing costs and ability to raise funds are directly impacted by our credit ratings. In addition, credit ratings may be important to customers or counterparties when we compete in certain markets and when we seek to engage in certain transactions including over-the-counter derivatives. It is our objective to maintain high quality credit ratings.

Credit ratings and outlooks are opinions subject to ongoing review by the ratings agencies and may change from time to time based on our financial performance, industry dynamics and other factors. During 2009, the ratings agencies took numerous actions to adjust our credit ratings and outlooks, many of which were negative. The ratings agencies have indicated that our credit ratings currently reflect their expectation that, if necessary, we would receive significant support from the U.S. government. In February 2010, Standard & Poor's affirmed our current credit ratings but revised the outlook to negative from stable based on their belief that it is less certain whether the U.S. government would be willing to provide extraordinary support. Other factors that influence our credit ratings include the ratings agencies' assessment of the general operating environment, our relative positions in the markets in which we compete, reputation, liquidity position, the level and volatility of earnings, corporate governance and risk management policies, capital position and capital management practices.

The credit ratings of Merrill Lynch & Co., Inc. from the three major credit ratings agencies are the same as those of Bank of America Corporation. The major credit ratings agencies have indicated that the primary drivers of Merrill Lynch's credit ratings are Bank of America's credit ratings.

A reduction in our credit ratings or the ratings of certain asset-backed securitizations could potentially have an adverse effect on our access to credit markets, the related cost of funds and our businesses. If Bank of America Corporation or Bank of America, N.A. commercial paper or short-term credit ratings were downgraded by one level, our incremental cost of funds and potential lost funding could be material.

The credit ratings of Bank of America Corporation and Bank of America, N.A. as of February 26, 2010 are reflected in the table below.

**Table 12 Credit Ratings**

	Bank of America Corporation						Bank of America, N.A.		
	Outlook	Long-term Senior Debt	Subordinated Debt	Trust Preferred	Preferred Stock	Short-term Debt	Long-term Senior Debt	Long-term Deposits	Short-term Debt
Moody's Investors Service	Stable	A2	A3	Baa3	Ba3	P-1	Aa3	Aa3	P-1
Standard & Poor's	Negative	A	A-	BB	BB	A-1	A+	A+	A-1
Fitch Ratings	Stable	A+	A	BB	BB-	F1+	A+	AA-	F1+

**Regulatory Capital**

At December 31, 2009, the Corporation operated its banking activities primarily under two charters: Bank of America, N.A. and FIA Card Services, N.A. With the acquisition of Merrill Lynch on January 1, 2009, we acquired Merrill Lynch Bank USA and Merrill Lynch Bank & Trust Co., FSB. Effective July 1, 2009, Merrill Lynch Bank USA merged into Bank of America, N.A. with Bank of America, N.A. as the surviving entity. Effective November 2, 2009, Merrill Lynch Bank & Trust Co., FSB merged into Bank of America, N.A., with Bank of America, N.A. as the surviving entity. Further, with the acquisition of Countrywide on July 1, 2008, we acquired Countrywide Bank, FSB, and effective April 27, 2009, Countrywide Bank, FSB converted to a national bank with the name Countrywide Bank, N.A. and immediately thereafter merged with and into Bank of America, N.A., with Bank of America, N.A. as the surviving entity.

Certain corporate sponsored trust companies which issue trust preferred securities (Trust Securities) are not consolidated under applicable

accounting guidance. In accordance with Federal Reserve guidance, Trust Securities qualify as Tier 1 capital with revised quantitative limits that will be effective on March 31, 2011. Such limits restrict certain types of capital to 15 percent of total core capital elements for internationally active bank holding companies. In addition, the Federal Reserve revised the qualitative standards for capital instruments included in regulatory capital. Internationally active bank holding companies are those with consolidated assets greater than \$250 billion or on-balance sheet exposure greater than \$10 billion. At December 31, 2009, our restricted core capital elements comprised 11.8 percent of total core capital elements.

Table 13 provides a reconciliation of the Corporation's total shareholders' equity at December 31, 2009 and 2008 to Tier 1 common capital, Tier 1 capital and total capital as defined by the regulations issued by the joint agencies. See *Note 16 – Regulatory Requirements and Restrictions* to the Consolidated Financial Statements for more information on our regulatory capital.

**Table 13 Reconciliation of Tier 1 Common Capital, Tier 1 Capital and Total Capital**

	December 31	
	2009	2008
(Dollars in millions)		
Total common shareholders' equity	\$194,236	\$139,351
Goodwill	(86,314)	(81,934)
Nonqualifying intangible assets <sup>(1)</sup>	(8,299)	(4,195)
Net unrealized losses on AFS debt and marketable equity securities and net losses on derivatives recorded in accumulated OCI, net-of-tax	1,034	5,479
Unamortized net periodic benefit costs recorded in accumulated OCI, net-of-tax	4,092	4,642
Exclusion of fair value adjustment related to the Merrill Lynch structured notes <sup>(2)</sup>	3,010	–
Common Equivalent Securities	19,290	–
Disallowed deferred tax asset	(7,080)	–
Other	425	(4)
<b>Total Tier 1 common capital</b>	<b>120,394</b>	<b>63,339</b>
Preferred stock	17,964	37,701
Trust preferred securities	21,448	18,105
Noncontrolling interest	582	1,669
<b>Total Tier 1 capital</b>	<b>160,388</b>	<b>120,814</b>
Long-term debt qualifying as Tier 2 capital	43,284	31,312
Allowance for loan and lease losses	37,200	23,071
Reserve for unfunded lending commitments	1,487	421
Other <sup>(3)</sup>	(16,282)	(3,957)
<b>Total capital</b>	<b>\$226,077</b>	<b>\$171,661</b>

<sup>(1)</sup>Nonqualifying intangible assets include core deposit intangibles, affinity relationships, customer relationships and other intangibles.

<sup>(2)</sup>Represents loss on Merrill Lynch structured notes, net-of-tax, that is excluded from Tier 1 common capital, Tier 1 capital and total capital for regulatory purposes.

<sup>(3)</sup>Balance includes a reduction of \$18.7 billion and \$6.7 billion related to allowance for loan and lease losses exceeding 1.25 percent of risk-weighted assets in 2009 and 2008. Balance also includes 45 percent of the pre-tax unrealized fair value adjustments on AFS marketable equity securities.

At December 31, 2009, the Corporation's Tier 1 common capital, Tier 1 capital, total capital and Tier 1 leverage ratios were 7.81 percent, 10.40 percent, 14.66 percent and 6.91 percent, respectively.

The Corporation calculates Tier 1 common capital as Tier 1 capital including CES less preferred stock, qualifying trust preferred securities, hybrid securities and qualifying noncontrolling interest. CES is included in Tier 1 common capital based upon applicable regulatory guidance and our expectation that the underlying Common Equivalent Stock would convert into common stock following shareholder approval of additional authorized shares. Shareholders approved the increase in the number of authorized shares of common stock at the special meeting of shareholders held on February 23, 2010 and the Common Equivalent Stock converted to common stock on February 24, 2010. Tier 1 common capital increased to \$120.4 billion at December 31, 2009 compared to \$63.3 billion at December 31, 2008. The Tier 1 common capital ratio increased 301 bps to 7.81 percent. This increase was driven primarily by the second quarter at-the-market common stock issuance and the preferred to common stock exchanges which together represented a benefit of 185 bps and the issuance of CES which together provided a benefit of 138 bps to the Tier 1 common capital ratio. In addition, Tier 1 common capital benefited from the common stock that was issued in connection with the

Merrill Lynch acquisition partially offset by an increase in risk-weighted assets due to the acquisition.

**Enterprise-wide Stress Testing**

As a part of our core risk management practices, the Corporation conducts enterprise-wide stress tests on a periodic basis to better understand earnings, capital and liquidity sensitivities to certain economic scenarios, including economic conditions that are more severe than anticipated. These enterprise-wide stress tests provide an understanding of the potential impacts to our risk profile, capital and liquidity. Scenario(s) are selected by a group comprised of senior line of business, risk and finance executives. Impacts to each line of business from each scenario are then analyzed and determined, primarily leveraging the models and processes utilized in everyday management routines. Impacts are assessed along with potential mitigating actions that may be taken in each scenario. Analysis from such stress scenarios is compiled for and reviewed through our ROC, ALMRC, and the Enterprise Risk Committee of the Board and serves to inform and be incorporated, along with other core business processes, into decision making by management and the Board. The Corporation continues to invest in and improve stress testing capabilities as a core business process.

**Off-Balance Sheet Liquidity Arrangements with Special Purpose Entities**

In the ordinary course of business, we support our customers' financing needs by facilitating their access to the commercial paper market. In addition, we utilize certain financing arrangements to meet our balance sheet management, funding and liquidity needs. These activities utilize special purpose entities (SPEs), typically in the form of corporations, limited liability companies, or trusts, which raise funds by issuing short-term commercial paper or other debt or equity instruments to third party investors. These SPEs typically hold various types of financial assets whose cash flows are the primary source of repayment for the liabilities of the SPEs. Investors have recourse to the assets in the SPE and often benefit from other credit enhancements, such as overcollateralization in the form of excess assets in the SPE, liquidity facilities and other arrangements. As a result, the SPEs can typically obtain a favorable credit rating from the ratings agencies, resulting in lower financing costs for us and our customers.

We have liquidity agreements, SBLCs and other arrangements with SPEs, as described below, under which we are obligated to provide funding in the event of a market disruption or other specified event or otherwise provide credit support to the entities. We also fund selected assets via derivative contracts with third party SPEs under which we may be

required to purchase the assets at par value or the third party SPE's cost to acquire the assets. We manage our credit risk and any market risk on these liquidity arrangements by subjecting them to our normal underwriting and risk management processes. Our credit ratings and changes thereto may affect the borrowing cost and liquidity of these SPEs. In addition, significant changes in counterparty asset valuation and credit standing may also affect the ability of the SPEs to issue commercial paper. The contractual or notional amount of these commitments as presented in Table 14 represents our maximum possible funding obligation and is not, in management's view, representative of expected losses or funding requirements.

The table below presents our liquidity exposure to unconsolidated SPEs, which include VIEs and QSPEs. VIEs are SPEs that lack sufficient equity at risk or whose equity investors do not have a controlling financial interest. QSPEs are SPEs whose activities are strictly limited to holding and servicing financial assets. As a result of our adoption of new accounting guidance on consolidation on January 1, 2010 as discussed in the following section, we consolidated all multi-seller conduits, asset acquisition conduits and credit card securitization trusts. In addition, we consolidated certain home equity securitization trusts, municipal bond trusts and credit-linked note and other vehicles.

**Table 14 Off-Balance Sheet Special Purpose Entities Liquidity Exposure**

	December 31, 2009		
	VIEs	QSPEs	Total
(Dollars in millions)			
Commercial paper conduits:			
Multi-seller conduits	\$ 25,135	\$ -	\$ 25,135
Asset acquisition conduits	1,232	-	1,232
Home equity securitizations	-	14,125	14,125
Municipal bond trusts	3,292	6,492	9,784
Collateralized debt obligation vehicles	3,283	-	3,283
Credit-linked note and other vehicles	1,995	-	1,995
Customer-sponsored conduits	368	-	368
Credit card securitizations	-	2,288	2,288
<b>Total liquidity exposure</b>	<b>\$ 35,305</b>	<b>\$ 22,905</b>	<b>\$ 58,210</b>
	December 31, 2008		
	VIEs	QSPEs	Total
Commercial paper conduits:			
Multi-seller conduits	\$ 41,635	\$ -	\$ 41,635
Asset acquisition conduits	2,622	-	2,622
Other corporate conduits	-	1,578	1,578
Home equity securitizations	-	13,064	13,064
Municipal bond trusts	3,872	2,921	6,793
Collateralized debt obligation vehicles	542	-	542
Customer-sponsored conduits	980	-	980
Credit card securitizations	-	946	946
<b>Total liquidity exposure</b>	<b>\$ 49,651</b>	<b>\$ 18,509</b>	<b>\$ 68,160</b>

At December 31, 2009, our total liquidity exposure to SPEs was \$58.2 billion, a decrease of \$10.0 billion from December 31, 2008. The decrease was attributable to decreases in commercial paper conduits due to maturities and liquidations partially offset by the acquisition of Merrill Lynch. Legacy Merrill Lynch related exposures as of December 31, 2009 were \$4.9 billion in municipal bond trusts, \$3.3 billion in CDO vehicles and \$2.0 billion in credit-linked note and other vehicles.

For more information on commercial paper conduits, municipal bond trusts, CDO vehicles, credit-linked note and other vehicles, see *Note 9 – Variable Interest Entities* to the Consolidated Financial Statements. For more information on home equity and credit card securitizations, see *Note 8 – Securitizations* to the Consolidated Financial Statements.

Customer-sponsored conduits are established by our customers to provide them with direct access to the commercial paper market. We are typically one of several liquidity providers for a customer's conduit. We do not provide SBLCs or other forms of credit enhancement to these conduits. Assets of these conduits consist primarily of auto loans and student loans. The liquidity commitments benefit from structural protections which vary depending upon the program, but given these protections, we view the exposures as investment grade quality. These commitments are included in *Note 14 – Commitments and Contingencies* to the Consolidated Financial Statements. As we typically provide less than 20 percent of the total liquidity commitments to these conduits and do not provide other forms of support, we have concluded that we do not hold a

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significant variable interest in the conduits and they are not included in our discussion of VIEs in *Note 9 – Variable Interest Entities* to the Consolidated Financial Statements.

### Impact of Adopting New Accounting Guidance on Consolidation

On June 12, 2009, the FASB issued new guidance on sale accounting criteria for transfers of financial assets, including transfers to QSPEs and consolidation of VIEs. As described more fully in *Note 8 – Securitizations* to the Consolidated Financial Statements, the Corporation routinely transfers mortgage loans, credit card receivables and other financial instruments to SPEs that meet the definition of a QSPE which are not currently subject to consolidation by the transferor. Among other things, this new guidance eliminates the concept of a QSPE and as a result, existing QSPEs generally will be subject to consolidation under the new guidance.

This new guidance also significantly changes the criteria by which an enterprise determines whether it must consolidate a VIE, as described more fully in *Note 9 – Variable Interest Entities* to the Consolidated Financial Statements. A VIE is an entity, typically an SPE, which has insufficient equity at risk or which is not controlled through voting rights held by

equity investors. Currently, a VIE is consolidated by the enterprise that will absorb a majority of the expected losses or expected residual returns created by the assets of the VIE. This new guidance requires that a VIE be consolidated by the enterprise that has both the power to direct the activities that most significantly impact the VIE's economic performance and the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE. This new guidance also requires that an enterprise continually reassesses, based on current facts and circumstances, whether it should consolidate the VIEs with which it is involved.

The table below shows the impact on a preliminary basis of this new accounting guidance in terms of incremental GAAP assets and risk-weighted assets for those VIEs and QSPEs that we consolidated on January 1, 2010. The assets and liabilities of the newly consolidated credit card securitization trusts, multi-seller commercial paper conduits, home equity lines of credit and certain other VIEs are recorded at their respective carrying values. The Corporation has elected to account for the assets and liabilities of the newly consolidated asset acquisition commercial paper conduits, municipal bond trusts and certain other VIEs under the fair value option.

**Table 15 Preliminary Incremental GAAP and Risk-Weighted Assets Impact**

(Dollars in billions)	Preliminary Incremental GAAP Assets	Estimated Incremental Risk-Weighted Assets
<b>Type of VIE/QSPE</b>		
Credit card securitization trusts <sup>(1)</sup>	\$ 70	\$ 8
Asset-backed commercial paper conduits <sup>(2)</sup>	15	11
Municipal bond trusts	5	1
Home equity lines of credit	5	5
Other	5	–
<b>Total</b>	<b>\$ 100</b>	<b>\$ 25</b>

<sup>(1)</sup>The Corporation undertook certain actions during 2009 related to its off-balance sheet credit card securitization trusts. As a result of these actions, we included approximately \$63.6 billion of incremental risk-weighted assets in its risk-based capital ratios as of December 31, 2009.

<sup>(2)</sup>Regulatory capital requirements changed effective January 1, 2010 for all ABCP conduits. The increase in risk-weighted assets in this table reflects the impact of these changes on all ABCP conduits, including those that were consolidated prior to January 1, 2010.

In addition to recording the incremental assets and liabilities on the Corporation's Consolidated Balance Sheet, we recorded an after-tax charge of approximately \$6 billion to retained earnings on January 1, 2010 as the cumulative effect of adoption of these new accounting standards. The charge relates primarily to the addition of \$11 billion of allowance for loan losses for the newly consolidated assets, principally credit card related.

On January 21, 2010, the joint agencies issued a final rule regarding risk-based capital and the impact of adoption of the new consolidation guidance issued by the FASB. The final rule allows for a phase-in period for a maximum of one year for the effect on risk-weighted assets and the regulatory limit on the inclusion of the allowance for loan and lease losses in Tier 2 capital related to the assets that are consolidated. Our current estimate of the incremental impact is a decrease in our Tier 1 and Tier 1 common capital ratios of 65 to 75 bps. However, the final capital impact will be affected by certain factors, including, the final determination of the cumulative effect of adoption of this new accounting guidance on retained earnings, and limitations of deferred tax assets for risk-based capital purposes. The Corporation has elected to forgo the phase-in period and consolidate the amounts for regulatory capital purposes as of January 1, 2010. For more information, refer to the Regulatory Initiatives section on page 43.

### Basel Regulatory Capital Requirements

In June 2004, the Basel II Accord was published with the intent of more closely aligning regulatory capital requirements with underlying risks, similar to economic capital. While economic capital is measured to cover unexpected losses, the Corporation also manages regulatory capital to adhere to regulatory standards of capital adequacy.

The Basel II Final Rule (Basel II Rules), which was published on December 7, 2007, establishes requirements for the U.S. implementation and provided detailed capital requirements for credit and operational risk under Pillar 1, supervisory requirements under Pillar 2 and disclosure requirements under Pillar 3. The Corporation will begin Basel II parallel implementation during the second quarter of 2010.

Financial institutions are required to successfully complete a minimum parallel qualification period before receiving regulatory approval to report regulatory capital using the Basel II methodology. During the parallel period, the resulting capital calculations under both the current (Basel I) rules and the Basel II Rules will be reported to the financial institutions regulatory supervisors for at least four consecutive quarterly periods. Once the parallel period is successfully completed, the financial institution will utilize Basel II as their methodology for calculating regulatory capital. A three-year transitional floor period will follow after which use of Basel I will be discontinued.

In July 2009, the Basel Committee on Banking Supervision released a consultative document entitled "Revisions to the Basel II Market Risk



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Framework” that would significantly increase the capital requirements for trading book activities if adopted as proposed. The proposal recommended implementation by December 31, 2010, but regulatory agencies are currently evaluating the proposed rulemaking and related impacts before establishing final rules. As a result, we cannot determine the implementation date or the final capital impact.

In December 2009, the Basel Committee on Banking Supervision issued a consultative document entitled “Strengthening the Resilience of the Banking Sector.” If adopted as proposed, this could increase significantly the aggregate equity that bank holding companies are required to hold by disqualifying certain instruments that previously have qualified as Tier 1 capital. In addition, it would increase the level of risk-weighted assets. The proposal could also increase the capital charges imposed on certain assets potentially making certain businesses more expensive to conduct. Regulatory agencies have not opined on the proposal for implementation. We continue to assess the potential impact of the proposal.

### Common Share Issuances and Repurchases

In January 2009, the Corporation issued 1.4 billion shares of common stock in connection with its acquisition of Merrill Lynch. For additional information regarding the Merrill Lynch acquisition, see *Note 2 – Merger*

### Common Stock Dividends

The following table provides a summary of our declared quarterly cash dividends on common stock during 2009 and through February 26, 2010.

**Table 16 Common Stock Dividend Summary**

Declaration Date	Record Date	Payment Date	Dividend Per Share
January 27, 2010	March 5, 2010	March 26, 2010	\$ 0.01
October 28, 2009	December 4, 2009	December 24, 2009	0.01
July 21, 2009	September 4, 2009	September 25, 2009	0.01
April 29, 2009	June 5, 2009	June 26, 2009	0.01
January 16, 2009	March 6, 2009	March 27, 2009	0.01

### Preferred Stock Issuances and Exchanges

During the second quarter of 2009, we completed an offer to exchange up to approximately 200 million shares of common stock at an average price of \$12.70 for outstanding depositary shares of portions of certain series of preferred stock. In addition, we also entered into agreements with certain holders of other non-government perpetual preferred shares to exchange their holdings of approximately \$10.9 billion aggregate liquidation preference of perpetual preferred stock into approximately 800 million shares of common stock. In total, the exchange offer and these privately negotiated exchanges covered the exchange of approximately \$14.8 billion aggregate liquidation preference of perpetual preferred stock into approximately 1.0 billion shares of common stock. During the second quarter of 2009, we recorded an increase to retained earnings and net income applicable to common shareholders of approximately \$580 million related to these exchanges. This represents the net of a \$2.6 billion benefit due to the excess of the carrying value of our non-convertible preferred stock over the fair value of the common stock exchanged. This was partially offset by a \$2.0 billion inducement to convertible preferred shareholders. The inducement represented the excess of the fair value of the common stock exchanged, which was accounted for as an induced conversion of convertible preferred stock, over the fair value of the common stock that would have been issued under the original conversion terms.

On December 2, 2009, we received approval from the U.S. Treasury and Federal Reserve to repay the U.S. government’s \$45.0 billion preferred stock investment provided under TARP. In accordance with the approval, on December 9, 2009, we repurchased all outstanding shares of Cumulative Perpetual Preferred Stock Series N, Series Q and Series R

and Restructuring Activity to the Consolidated Financial Statements. In addition, during the first quarter of 2009, we issued warrants to purchase approximately 199.1 million shares of common stock in connection with preferred stock issuances to the U.S. government. For more information, see the following preferred stock discussion. During the second quarter of 2009, we issued 1.25 billion shares of common stock at an average price of \$10.77 per share through an at-the-market issuance program resulting in gross proceeds of approximately \$13.5 billion. In addition, we issued approximately 7.4 million shares under employee stock plans.

In connection with the TARP repayment approval, the Corporation agreed to increase equity by \$3.0 billion through asset sales to be approved by the Federal Reserve and contracted for by June 30, 2010. To the extent those asset sales are not completed by the end of 2010, the Corporation must raise a commensurate amount of common equity. We also agreed to raise up to approximately \$1.7 billion through the issuance in 2010 of restricted stock in lieu of a portion of incentive cash compensation to certain of the Corporation’s associates as part of their 2009 year-end incentive payments.

For more information regarding our common share issuances, see *Note 15 – Shareholders’ Equity and Earnings Per Common Share* to the Consolidated Financial Statements.

issued to the U.S. Treasury as part of the TARP. While participating in the TARP we recorded \$7.4 billion in dividends and accretion on the TARP Preferred Stock and repayment will save us approximately \$3.6 billion in annual dividends and accretion. We did not repurchase the related common stock warrants issued to the U.S. Treasury in connection with its TARP investment. The U.S. Treasury recently announced its intention to auction these warrants during March 2010. For more detail on the TARP Preferred Stock, refer to *Note 15 – Shareholders’ Equity and Earnings Per Common Share* to the Consolidated Financial Statements.

The Corporation repurchased the TARP Preferred Stock through the use of \$25.7 billion in excess liquidity and \$19.3 billion in proceeds from the sale of 1.3 billion units of CES valued at \$15.00 per unit. The CES consisted of depositary shares representing interests in shares of Common Equivalent Junior Preferred Stock Series S (Common Equivalent Stock) and warrants (Contingent Warrants) to purchase an aggregate 60 million shares of the Corporation’s common stock. Each depositary share represented a 1/1000<sup>th</sup> interest in a share of Common Equivalent Stock and each Contingent Warrant granted the holder the right to purchase 0.0467 of a share of a common stock for \$.01 per share. Each depositary share entitled the holder, through the depositary, to a proportional fractional interest in all rights and preferences of the Common Equivalent Stock, including conversion, dividend, liquidation and voting rights.

The Corporation held a special meeting of stockholders on February 23, 2010 at which we obtained stockholder approval of an amendment to our amended and restated certificate of incorporation to increase the number of authorized shares of our common stock, and following effectiveness of the amendment, on February 24, 2010, the Common Equivalent Stock converted in full into our common stock and

the Contingent Warrants automatically expired without becoming exercisable, and the CES ceased to exist.

## Credit Risk Management

The economic recession accelerated in late 2008 and continued to deepen into the first half of 2009 but has shown some signs of stabilization and possible improvement over the second half of the year. Consumers continued to be under financial stress as unemployment and underemployment remained at elevated levels and individuals spent longer periods without work. These factors combined with further reductions in spending by consumers and businesses, continued home price declines and turmoil in sectors of the financial markets continued to negatively impact both the consumer and commercial loan portfolios. During 2009, these conditions drove increases in net charge-offs and nonperforming loans and foreclosed properties as well as higher commercial criticized utilized exposure and reserve increases across most portfolios. The depth, breadth and duration of the economic downturn, as well as the resulting impact on the credit quality of the loan portfolios remain unclear into 2010.

We continue to refine our credit standards to meet the changing economic environment. In our consumer businesses, we have implemented a number of initiatives to mitigate losses. These include increased use of judgmental lending and adjustment of underwriting, and account and line management standards and strategies, including reducing unfunded lines where appropriate. Additionally, we have increased collections, loan modification and customer assistance infrastructures to enhance customer support. In 2009, we provided home ownership retention opportunities to approximately 460,000 customers. This included completion of 260,000 customer loan modifications with total unpaid balances of approximately \$55 billion and approximately 200,000 customers who were in trial-period modifications under the government's Making Home Affordable program. As of January 2010, approximately 220,000 customers were in trial period modifications and more than 12,700 were in permanent modifications. Of the 260,000 modifications done during 2009, in terms of both the volume of modifications and the unpaid principal balance associated with the underlying loans most are in the portfolio serviced for investors and is not on our balance sheet. During 2008, Bank of America and Countrywide completed 230,000 loan modifications. The most common types of modifications include rate reductions, capitalization of past due amounts or a combination of rate reduction and capitalization of past due amounts, which are 17 percent, 21 percent and 40 percent, respectively, of modifications completed in 2009. We also provide rate and payment extensions, principal forbearance or forgiveness, and other actions. These modification types are generally considered TDRs except for certain short-term modifications where we expect to collect the full contractual principal and interest.

A number of initiatives have also been implemented in our small business commercial – domestic portfolio including changes to underwriting thresholds augmented by a judgmental decision-making process by experienced underwriters including increasing minimum FICO scores and lowering initial line assignments. We have also increased the intensity of our existing customer line management strategies.

To mitigate losses in the commercial businesses, we have increased the frequency and intensity of portfolio monitoring, hedging activity and our efforts in managing an exposure when we begin to see signs of deterioration. Our lines of business and risk management personnel use a variety of tools to continually monitor the ability of a borrower or counterparty to perform under its obligations. It is our practice to transfer the management of deteriorating commercial exposures to independent Special Asset officers as a credit approaches criticized levels. Our experi - -

ence has shown that this discipline generates an objective assessment of the borrower's financial health and the value of our exposure, and maximizes our recovery upon resolution. As part of our underwriting process we have increased scrutiny around stress analysis and required pricing and structure to reflect current market dynamics. Given the volatility of the financial markets, we increased the frequency of various tests designed to understand what the volatility could mean to our underlying credit risk. Given the potential for single name risk associated with any disruption in the financial markets, we use a real-time counterparty event management process to monitor key counterparties.

Additionally, we account for certain large corporate loans and loan commitments (including issued but unfunded letters of credit which are considered utilized for credit risk management purposes) that exceed our single name credit risk concentration guidelines under the fair value option. These loans and loan commitments are then actively managed and hedged, principally by purchasing credit default protection. By including the credit risk of the borrower in the fair value adjustments, any credit spread deterioration or improvement is recorded in other income immediately as part of the fair value adjustment. As a result, the allowance for loan and lease losses and the reserve for unfunded lending commitments are not used to capture credit losses inherent in any nonperforming or impaired loans and unfunded commitments carried at fair value. See the Commercial Loans Carried at Fair Value section on page 69 for more information on the performance of these loans and loan commitments and see *Note 20 – Fair Value Measurements* to the Consolidated Financial Statements for additional information on our fair value option elections.

The acquisition of Merrill Lynch contributed to both our consumer and commercial loans and commitments. Acquired consumer loans consisted of residential mortgages, home equity loans and lines of credit and direct/indirect loans (principally securities-based lending margin loans). Commercial exposures were comprised of both investment and non-investment grade loans and included exposures to CMBS, monolines and leveraged finance. Consistent with other acquisitions, we incorporated the acquired assets into our overall credit risk management processes.

## Consumer Portfolio Credit Risk Management

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

For information on our accounting policies regarding delinquencies, nonperforming status and charge-offs for the consumer portfolio, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

## Consumer Credit Portfolio

Weakness in the economy and housing markets, elevated unemployment and underemployment and tighter credit conditions resulted in deterioration across most of our consumer portfolios during 2009. However,

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during the last half of the year, the unsecured consumer portfolios within *Global Card Services* experienced lower levels of delinquency and by the fourth quarter consumer credit began to stabilize and in some cases improve. As part of our ongoing risk mitigation and consumer client support initiatives, we have been working with borrowers to modify their loans to terms that better align with their current ability to pay. Under certain circumstances, we identify these as TDRs which are modifications where an economic concession is granted to a borrower experiencing financial difficulty. For more information on TDRs and portfolio impacts, see Nonperforming Consumer Loans and Foreclosed Properties Activity beginning on page 62 and *Note 6 – Outstanding Loans and Leases* to the Consolidated Financial Statements.

Table 17 presents our consumer loans and leases and our managed credit card portfolio, and related credit quality information. Nonperforming loans do not include consumer credit card, consumer loans secured by personal property or unsecured consumer loans that are past due as these loans are generally charged off no later than the end of the month in which the account becomes 180 days past due. Real estate-secured past due loans, repurchased pursuant to our servicing agreement with Government National Mortgage Association (GNMA) are not reported as nonperforming as repayments are insured by the Federal Housing Administration (FHA). Additionally, nonperforming loans and accruing balances past due 90 days or more do not include the Countrywide purchased impaired loans even though the customer may be contractually past due. Loans that were acquired from Countrywide that were considered impaired were written down to fair value upon acquisition. In addition to being included in the "Outstandings" column in the following table, these

loans are also shown separately, net of purchase accounting adjustments, for increased transparency in the "Countrywide Purchased Impaired Loan Portfolio" column. For additional information, see *Note 6 – Outstanding Loans and Leases* to the Consolidated Financial Statements. Under certain circumstances, loans that were originally classified as discontinued real estate loans upon acquisition have been subsequently modified and are now included in the residential mortgage portfolio shown below. The impact of the Countrywide portfolio on certain credit statistics is reported where appropriate. Refer to the Countrywide Purchased Impaired Loan Portfolio discussion beginning on page 59 for more information.

Loans that were acquired from Merrill Lynch were recorded at fair value including those that were considered impaired upon acquisition. The Merrill Lynch consumer purchased impaired loan portfolio did not materially alter the reported credit quality statistics of the consumer portfolios and is, therefore, excluded from the "Countrywide Purchased Impaired Loan Portfolio" column and discussion that follows. In addition, the nonperforming loans and delinquency statistics presented below include the Merrill Lynch purchased impaired loan portfolio based on the customer's performance under the contractual terms of the loan. At December 31, 2009, consumer loans included \$47.2 billion from Merrill Lynch of which \$2.0 billion of residential mortgage and \$146 million of home equity loans were included in the Merrill Lynch purchased impaired loan portfolio. There were no reported net charge-offs on these loans during 2009 as the initial fair value at acquisition date already considered the estimated credit losses.

**Table 17 Consumer Loans and Leases**

	December 31							
	Outstandings		Nonperforming <sup>(1)</sup>		Accruing Past Due 90 Days or More <sup>(2)</sup>		Countrywide Purchased Impaired Loan Portfolio	
	2009	2008	2009	2008	2009	2008	2009	2008
<b>Held basis</b>								
Residential mortgage <sup>(3)</sup>	\$242,129	\$248,063	\$ 16,596	\$ 7,057	\$ 11,680	\$ 372	\$11,077	\$10,013
Home equity	149,126	152,483	3,804	2,637	–	–	13,214	14,099
Discontinued real estate <sup>(4)</sup>	14,854	19,981	249	77	–	–	13,250	18,097
Credit card – domestic	49,453	64,128	n/a	n/a	2,158	2,197	n/a	n/a
Credit card – foreign	21,656	17,146	n/a	n/a	500	368	n/a	n/a
Direct/Indirect consumer <sup>(5)</sup>	97,236	83,436	86	26	1,488	1,370	n/a	n/a
Other consumer <sup>(6)</sup>	3,110	3,442	104	91	3	4	n/a	n/a
<b>Total held</b>	<b>\$577,564</b>	<b>\$588,679</b>	<b>\$ 20,839</b>	<b>\$ 9,888</b>	<b>\$ 15,829</b>	<b>\$ 4,311</b>	<b>\$37,541</b>	<b>\$42,209</b>
<b>Supplemental managed basis data</b>								
Credit card – domestic	\$129,642	\$154,151	n/a	n/a	\$ 5,408	\$ 5,033	n/a	n/a
Credit card – foreign	31,182	28,083	n/a	n/a	799	717	n/a	n/a
<b>Total credit card – managed</b>	<b>\$160,824</b>	<b>\$182,234</b>	<b>n/a</b>	<b>n/a</b>	<b>\$ 6,207</b>	<b>\$ 5,750</b>	<b>n/a</b>	<b>n/a</b>

<sup>(1)</sup>Nonperforming held consumer loans and leases as a percentage of outstanding consumer loans and leases were 3.61 percent (3.86 percent excluding the Countrywide purchased impaired loan portfolio) and 1.68 percent (1.81 percent excluding the Countrywide purchased impaired loan portfolio) at December 31, 2009 and 2008.

<sup>(2)</sup>Accruing held consumer loans and leases past due 90 days or more as a percentage of outstanding consumer loans and leases were 2.74 percent (2.93 percent excluding Countrywide purchased impaired loan portfolio) and 0.73 percent (0.79 percent excluding the Countrywide purchased impaired loan portfolio) at December 31, 2009 and 2008. Residential mortgages accruing past due 90 days or more represent repurchases of insured or guaranteed loans. See Residential Mortgage discussion for more detail.

<sup>(3)</sup>Outstandings include foreign residential mortgages of \$552 million at December 31, 2009 mainly from the Merrill Lynch acquisition. We did not have any foreign residential mortgage loans at December 31, 2008.

<sup>(4)</sup>Outstandings include \$13.4 billion and \$18.2 billion of pay option loans and \$1.5 billion and \$1.8 billion of subprime loans at December 31, 2009 and 2008. We no longer originate these products.

<sup>(5)</sup>Outstandings include dealer financial services loans of \$41.6 billion and \$40.1 billion, consumer lending loans of \$19.7 billion and \$28.2 billion, securities-based lending margin loans of \$12.9 billion and \$0, and foreign consumer loans of \$8.0 billion and \$1.8 billion at December 31, 2009 and 2008, respectively.

<sup>(6)</sup>Outstandings include consumer finance loans of \$2.3 billion and \$2.6 billion, and other foreign consumer loans of \$709 million and \$618 million at December 31, 2009 and 2008.

n/a= not applicable

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Table 18 presents net charge-offs and related ratios for our consumer loans and leases and net losses and related ratios for our managed credit card portfolio for 2009 and 2008. The reported net charge-off ratios for residential mortgage, home equity and discontinued real estate

benefit from the addition of the Countrywide purchased impaired loan portfolio as the initial fair value adjustments recorded on those loans upon acquisition already included the estimated credit losses.

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

(Dollars in millions)	Net Charge-offs/Losses		Net Charge-off/Loss Ratios (1, 2)	
	2009	2008	2009	2008
<b>Held basis</b>				
Residential mortgage	\$ 4,350	\$ 925	1.74%	0.36%
Home equity	7,050	3,496	4.56	2.59
Discontinued real estate	101	16	0.58	0.15
Credit card – domestic	6,547	4,161	12.50	6.57
Credit card – foreign	1,239	551	6.30	3.34
Direct/Indirect consumer	5,463	3,114	5.46	3.77
Other consumer	428	399	12.94	10.46
<b>Total held</b>	<b>\$25,178</b>	<b>\$12,662</b>	<b>4.22</b>	<b>2.21</b>
<b>Supplemental managed basis data</b>				
Credit card – domestic	\$16,962	\$10,054	12.07	6.60
Credit card – foreign	2,223	1,328	7.43	4.17
<b>Total credit card – managed</b>	<b>\$19,185</b>	<b>\$11,382</b>	<b>11.25</b>	<b>6.18</b>

(1) Net charge-off/loss ratios are calculated as held net charge-offs or managed net losses divided by average outstanding held or managed loans and leases.

(2) Net charge-off ratios excluding the Countrywide purchased impaired loan portfolio were 1.82 percent and 0.36 percent for residential mortgage, 5.00 percent and 2.73 percent for home equity, 5.57 percent and 1.33 percent for discontinued real estate, and 4.52 percent and 2.29 percent for the total held portfolio for 2009 and 2008. These are the only product classifications materially impacted by the Countrywide purchased impaired loan portfolio for 2009 and 2008. For all loan and lease categories, the dollar amounts of the net charge-offs were unchanged.

We believe that the presentation of information adjusted to exclude the impacts of the Countrywide purchased impaired loan portfolio is more representative of the ongoing operations and credit quality of the business. As a result, in the following discussions of the residential mortgage, home equity and discontinued real estate portfolios, we supplement certain reported statistics with information that is adjusted to exclude the impacts of the Countrywide purchased impaired loan portfolio. In addition, beginning on page 59, we separately disclose information on the Countrywide purchased impaired loan portfolio.

### Residential Mortgage

The residential mortgage portfolio, which excludes the discontinued real estate portfolio acquired with Countrywide, makes up the largest percentage of our consumer loan portfolio at 42 percent of consumer loans and leases (43 percent excluding the Countrywide purchased impaired loan portfolio) at December 31, 2009. Approximately 15 percent of the residential portfolio is in *GWIM* and represents residential mortgages that are originated for the home purchase and refinancing needs of our affluent customers. The remaining portion of the portfolio is mostly in *All Other* and is comprised of both purchased loans as well as residential loans originated for our customers which are used in our overall ALM activities.

Outstanding loans and leases decreased \$5.9 billion at December 31, 2009 compared to December 31, 2008 due to lower balance sheet retention of new originations, paydowns and charge-offs as well as sales and conversions of loans into retained MBS. These decreases were offset, in part, by the acquisition of Merrill Lynch and GNMA repurchases. Merrill Lynch added \$21.7 billion of residential mortgage outstandings as of December 31, 2009. At December 31, 2009 and 2008, loans past due 90 days or more and still accruing interest of \$11.7 billion and \$372 million were related to repurchases pursuant to our servicing agreements with GNMA where repayments are insured by the FHA. The increase was driven by the repurchase of delinquent loans from securitizations during the year as we repurchase these loans for economic reasons, with no significant detrimental impact to our risk exposure. Excluding these repurchases, the accruing loans past due 90 days or more as a percentage of consumer loans and leases would have

been 0.72 percent (0.77 percent excluding the Countrywide purchased impaired loan portfolio) and 0.67 percent (0.72 percent excluding the Countrywide purchased impaired loan portfolio) at December 31, 2009 and 2008.

Nonperforming residential mortgage loans increased \$9.5 billion compared to December 31, 2008 due to the impacts of the weak housing markets and economic conditions and in part due to TDRs. For more information on TDRs, refer to the Nonperforming Consumer Loans and Foreclosed Properties Activity discussion on page 62 and *Note 6 – Outstanding Loans and Leases* to the Consolidated Financial Statements. At December 31, 2009, \$9.6 billion or approximately 58 percent, of the nonperforming residential mortgage loans were greater than 180 days past due and had been written down to their fair values. Net charge-offs increased \$3.4 billion to \$4.4 billion in 2009, or 1.74 percent (1.82 percent excluding the Countrywide purchased impaired portfolio), of total average residential mortgage loans compared to 0.36 percent (0.36 percent excluding the Countrywide purchased impaired portfolio) for 2008. These increases reflect the impacts of the weak housing markets and the weak economy. See the Countrywide Purchased Impaired Loan Portfolio discussion beginning on page 59 for more information.

We mitigate a portion of our credit risk through synthetic securitizations which are cash collateralized and provide mezzanine risk protection of \$2.5 billion which will reimburse us in the event that losses exceed 10 bps of the original pool balance. For further information regarding these synthetic securitizations, see *Note 6 – Outstanding Loans and Leases* to the Consolidated Financial Statements. The reported net charge-offs for residential mortgages do not include the benefits of amounts reimbursable under cash collateralized synthetic securitizations. Adjusting for the benefit of this credit protection, the residential mortgage net charge-off ratio in 2009 would have been reduced by 25 bps and four bps in 2008. Synthetic securitizations and the protection provided by GSEs together provided risk mitigation for approximately 32 percent and 48 percent of our residential mortgage portfolio at December 31, 2009 and 2008. Our regulatory risk-weighted assets are reduced as a result of these risk protection transactions because we transferred a portion of our credit risk to unaffiliated parties. At December 31, 2009 and 2008, these

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transactions had the cumulative effect of reducing our risk-weighted assets by \$16.8 billion and \$34.0 billion, and strengthened our Tier 1 capital ratio by 11 bps and 24 bps and our Tier 1 common capital ratio by eight bps and 12 bps.

Below is a discussion of certain risk characteristics of the residential mortgage portfolio, excluding the Countrywide purchased impaired loan portfolio, which contributed to higher losses. These characteristics include loans with high refreshed LTVs, loans which were originated at the peak of home prices in 2006 and 2007, loans to borrowers located in the states of California and Florida where we have concentrations and where significant declines in home prices have been experienced, as well as interest-only loans. Although the disclosures below address each of these risk characteristics separately, there is significant overlap in loans with these characteristics, which contributed to a disproportionate share of the losses in the portfolio. Excluding the Countrywide purchased impaired portfolio, residential mortgage loans with all of these higher risk characteristics comprised seven percent of the total residential mortgage portfolio at December 31, 2009, but have accounted for 31 percent of the residential mortgage net charge-offs in 2009.

Residential mortgage loans with a greater than 90 percent but less than 100 percent refreshed LTV represented 11 percent of the residential mortgage portfolio and loans with a refreshed LTV greater than 100 percent represented 26 percent at December 31, 2009. Of the loans with a refreshed LTV greater than 100 percent, 90 percent were performing at December 31, 2009. Loans with a refreshed LTV greater than 100 per -

cent reflect loans where the outstanding book balance of the loan is greater than the most recent valuation of the property securing the loan. The majority of these loans have a refreshed LTV greater than 100 percent due primarily to home price deterioration from the weakened economy. Loans with refreshed FICO scores below 620 represented 16 percent of the residential mortgage portfolio.

The 2006 and 2007 vintage loans, which represented 42 percent of our residential mortgage portfolio at December 31, 2009, continued to season and have higher refreshed LTVs and accounted for 69 percent of nonperforming residential mortgage loans at December 31, 2009 and approximately 75 percent of residential mortgage net charge-offs during 2009.

The table below presents outstandings, nonperforming loans and net charge-offs by certain state concentrations for the residential mortgage portfolio. California and Florida combined represented 43 percent of the total residential mortgage portfolio and 47 percent of nonperforming residential mortgage loans at December 31, 2009, but accounted for 58 percent of the residential mortgage net charge-offs for 2009. The Los Angeles-Long Beach-Santa Ana Metropolitan Statistical Area (MSA) within California represented 12 percent and 13 percent of the total residential mortgage portfolio at December 31, 2009 and 2008. Additionally, 37 percent and 24 percent of loans in California and Florida are in reference pools of synthetic securitizations, as described above, which provide mezzanine risk protection.

**Table 19 Residential Mortgage State Concentrations**

	December 31				Year Ended December 31	
	Outstandings		Nonperforming		Net Charge-offs	
	2009	2008	2009	2008	2009	2008
(Dollars in millions)						
California	\$ 82,329	\$ 84,847	\$ 5,967	\$ 2,028	\$ 1,726	\$ 411
Florida	16,518	15,787	1,912	1,012	796	154
New York	16,278	15,539	632	255	66	5
Texas	10,737	10,804	534	315	59	20
Virginia	7,812	9,696	450	229	89	32
Other U.S./Foreign	97,378	101,377	7,101	3,218	1,614	303
<b>Total residential mortgage loans (excluding the Countrywide purchased impaired residential mortgage loan portfolio)</b>	<b>\$ 231,052</b>	<b>\$ 238,050</b>	<b>\$ 16,596</b>	<b>\$ 7,057</b>	<b>\$ 4,350</b>	<b>\$ 925</b>
<b>Total Countrywide purchased impaired residential mortgage loan portfolio <sup>(1)</sup></b>	<b>11,077</b>	<b>10,013</b>				
<b>Total residential mortgage loan portfolio</b>	<b>\$ 242,129</b>	<b>\$ 248,063</b>				

<sup>(1)</sup> Represents acquired loans from Countrywide that were considered impaired and written down to fair value upon acquisition date. See page 59 for the discussion of the characteristics of the purchased impaired loans.

Of the residential mortgage portfolio, \$84.2 billion, or 35 percent, at December 31, 2009 are interest-only loans of which 89 percent were performing. Nonperforming balances on interest-only residential mortgage loans were \$9.1 billion, or 55 percent, of total nonperforming residential mortgages. Additionally, net charge-offs on the interest-only portion of the portfolio represented 58 percent of the total residential mortgage net charge-offs for 2009.

The Community Reinvestment Act (CRA) encourages banks to meet the credit needs of their communities for housing and other purposes, particularly in neighborhoods with low or moderate incomes. At December 31, 2009, our CRA portfolio comprised six percent of the total residential mortgage loan balances but comprised 17 percent of nonperforming residential mortgage loans. This portfolio also comprised 20 percent of residential mortgage net charge-offs during 2009. While approximately 32 percent of our residential mortgage portfolio carries risk mitigation protection, only a small portion of our CRA portfolio is covered by this protection.

We have sold and continue to sell mortgage and other loans, including mortgage loans, to third-party buyers and to FNMA and FHLMC under agreements that contain representations and warranties related to, among other things, the process for selecting the loans for inclusion in a sale and compliance with applicable criteria established by the buyer. Such agreements contain provisions under which we may be required to either repurchase the loans or indemnify or provide other recourse to the buyer or insurer if there is a breach of the representations and warranties that materially and adversely affects the interests of the buyer or pursuant to such other standard established by the terms of such agreements. We have experienced and continue to experience increasing repurchase and similar demands from, and disputes with buyers and insurers. We expect to contest such demands that we do not believe are valid. In the event that we are required to repurchase loans that have been the subject of repurchase demands or otherwise provide indemnification or other recourse, this could significantly increase our losses and thereby affect our future earnings. For further information regarding representations and warranties, see Note 8 – Securitizations to the Consolidated Financial Statements, and Item 1A., Risk Factors.

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### Home Equity

The home equity portfolio is comprised of home equity lines of credit, home equity loans and reverse mortgages. At December 31, 2009, approximately 87 percent of the home equity portfolio was included in *Home Loans & Insurance*, while the remainder of the portfolio was primarily in *GWIM*. Outstanding balances in the home equity portfolio decreased \$3.4 billion at December 31, 2009 compared to December 31, 2008 due to charge-offs and management of credit lines in the legacy portfolio partially offset by the acquisition of Merrill Lynch. Of the loans in the home equity portfolio at December 31, 2009 and 2008, approximately \$26.0 billion, or 18 percent, and \$23.2 billion, or 15 percent, were in first lien positions (19 percent and 17 percent excluding the Countrywide purchased impaired home equity loan portfolio). For more information on the Countrywide purchased impaired home equity loan portfolio, see the Countrywide Purchased Impaired Loan Portfolio discussion beginning on page 59.

Home equity unused lines of credit totaled \$92.7 billion at December 31, 2009 compared to \$107.4 billion at December 31, 2008. This decrease was driven primarily by higher customer account net utilization and lower attrition as well as line management initiatives on deteriorating accounts with declining equity positions partially offset by the Merrill Lynch acquisition. The home equity line of credit utilization rate was 56 percent at December 31, 2009 compared to 52 percent at December 31, 2008.

Nonperforming home equity loans increased \$1.2 billion compared to December 31, 2008 due to the weak housing market and economic conditions and in part to TDRs. For more information on TDRs, refer to the Nonperforming Consumer Loans and Foreclosed Properties Activity discussion on page 62 and Note 6 – *Outstanding Loans and Leases* to the Consolidated Financial Statements. At December 31, 2009, \$721 million, or approximately 20 percent, of the nonperforming home equity loans were greater than 180 days past due and had been written down to their fair values. Net charge-offs increased \$3.6 billion to \$7.1 billion for 2009, or 4.56 percent (5.00 percent excluding the Countrywide purchased impaired loan portfolio) of total average home equity loans compared to 2.59 percent (2.73 percent excluding the Countrywide purchased impaired loan portfolio) in 2008. These increases were driven by continued weakness in the housing markets and the economy.

There are certain risk characteristics of the home equity portfolio, excluding the Countrywide purchased impaired loan portfolio, which have contributed to higher losses. These characteristics include loans with high refreshed CLTVs, loans originated at the peak of home prices in 2006 and 2007 and loans in geographic areas that have experienced the most significant declines in home prices. Home price declines coupled with the fact that most home equity loans are secured by second lien

positions have significantly reduced and, in some cases, eliminated all collateral value after consideration of the first lien position. Although the disclosures below address each of these risk characteristics separately, there is significant overlap in loans with these characteristics, which has contributed to a disproportionate share of losses in the portfolio. Excluding the Countrywide purchased impaired portfolio, home equity loans with all of these higher risk characteristics comprised 11 percent of the total home equity portfolio at December 31, 2009, but have accounted for 38 percent of the home equity net charge-offs for 2009.

Home equity loans with greater than 90 percent but less than 100 percent refreshed CLTVs comprised 12 percent of the home equity portfolio while loans with refreshed CLTVs greater than 100 percent comprised 31 percent of the home equity portfolio at December 31, 2009. Net charge-offs on loans with a refreshed CLTV greater than 100 percent represented 82 percent of net charge-offs for 2009. Of those loans with a refreshed CLTV greater than 100 percent, 95 percent were performing at December 31, 2009. Home equity loans and lines of credit with a refreshed CLTV greater than 100 percent reflect loans where the balance and available line of credit of the combined loans are equal to or greater than the most recent valuation of the property securing the loan. The majority of these high refreshed CLTV ratios are due to the weakened economy and home price declines. In addition, loans with a refreshed FICO score below 620 represented 13 percent of the home equity loans at December 31, 2009. Of the total home equity portfolio, 68 percent at December 31, 2009 were interest-only loans.

The 2006 and 2007 vintage loans, which represent 49 percent of our home equity portfolio, continued to season and have higher refreshed CLTVs and accounted for 62 percent of nonperforming home equity loans at December 31, 2009 and approximately 72 percent of net charge-offs for 2009. Additionally, legacy Bank of America discontinued the program of purchasing non-franchise originated home equity loans in the second quarter of 2007. These purchased loans represented only two percent of the home equity portfolio but accounted for 10 percent of home equity net charge-offs for 2009.

The table below presents outstandings, nonperforming loans and net charge-offs by certain state concentrations for the home equity portfolio. California and Florida combined represented 41 percent of the total home equity portfolio and 50 percent of nonperforming home equity loans at December 31, 2009, but accounted for 60 percent of the home equity net charge-offs for 2009. In the New York area, the New York-Northern New Jersey-Long Island MSA made up 11 percent of outstanding home equity loans at December 31, 2009 but comprised only six percent of net charge-offs for 2009. The Los Angeles-Long Beach-Santa Ana MSA within California made up 11 percent of outstanding home equity loans at December 31, 2009 and 13 percent of net charge-offs for 2009.

**Table 20 Home Equity State Concentrations**

	December 31				Year Ended December 31	
	Outstandings		Nonperforming		Net Charge-offs	
	2009	2008	2009	2008	2009	2008
(Dollars in millions)						
California	\$ 38,573	\$ 38,015	\$ 1,178	\$ 857	\$2,669	\$1,464
Florida	16,735	17,893	731	597	1,583	788
New York	8,752	8,602	274	176	262	96
New Jersey	8,732	8,929	192	126	225	96
Massachusetts	6,155	6,008	90	48	93	56
Other U.S./Foreign	56,965	58,937	1,339	833	2,218	996
<b>Total home equity loans (excluding the Countrywide purchased impaired home equity portfolio)</b>	<b>\$ 135,912</b>	<b>\$138,384</b>	<b>\$ 3,804</b>	<b>\$ 2,637</b>	<b>\$7,050</b>	<b>\$3,496</b>
<b>Total Countrywide purchased impaired home equity portfolio <sup>(1)</sup></b>	<b>13,214</b>	<b>14,099</b>				
<b>Total home equity portfolio</b>	<b>\$ 149,126</b>	<b>\$152,483</b>				

<sup>(1)</sup>Represents acquired loans from Countrywide that were considered impaired and written down to fair value at the acquisition date. See page 59 for the discussion of the characteristics of the purchased impaired loans.

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### Discontinued Real Estate

The discontinued real estate portfolio, totaling \$14.9 billion at December 31, 2009, consisted of pay option and subprime loans obtained in the Countrywide acquisition. Upon acquisition, the majority of the discontinued real estate portfolio was considered impaired and written down to fair value. At December 31, 2009, the Countrywide purchased impaired loan portfolio comprised \$13.3 billion, or 89 percent, of the \$14.9 billion discontinued real estate portfolio. This portfolio is included in *All Other* and is managed as part of our overall ALM activities. See the Countrywide Purchased Impaired Loan Portfolio discussion below for more information on the discontinued real estate portfolio.

At December 31, 2009, the purchased non-impaired discontinued real estate portfolio was \$1.6 billion. Loans with greater than 90 percent refreshed LTVs and CLTVs comprised 25 percent of this portfolio and those with refreshed FICO scores below 620 represented 39 percent of the portfolio. California represented 37 percent of the portfolio and 30 percent of the nonperforming loans while Florida represented nine percent of the portfolio and 16 percent of the nonperforming loans at December 31, 2009. The Los Angeles-Long Beach-Santa Ana MSA within California made up 15 percent of outstanding discontinued real estate loans at December 31, 2009.

### Countrywide Purchased Impaired Loan Portfolio

Loans acquired with evidence of credit quality deterioration since origination and for which it is probable at purchase that we will be unable to collect all contractually required payments are accounted for under the accounting guidance for purchased impaired loans, which addresses accounting for differences between contractual and expected cash flows to be collected from the Corporation's initial investment in loans if those differences are attributable, at least in part, to credit quality. Evidence of credit quality deterioration as of the acquisition date may include statistics such as past due status, refreshed FICO scores and refreshed LTVs. Purchased impaired loans are recorded at fair value and the applicable accounting guidance prohibits carrying over or creation of valuation allowances in the initial accounting. The Merrill Lynch purchased impaired consumer loan portfolio did not materially alter the reported credit quality statistics of the consumer portfolios. As such, the Merrill Lynch consumer purchased impaired loans are excluded from the following discussion and credit statistics.

Certain acquired loans of Countrywide that were considered impaired were written down to fair value at the acquisition date. As of December 31, 2009, the carrying value was \$37.5 billion and the unpaid principal balance of these loans was \$47.7 billion. Based on the unpaid

principal balance, \$30.6 billion have experienced no charge-offs and of these loans 82 percent, or \$25.1 billion are current based on their contractual terms. Of the \$5.5 billion that are not current, approximately 51 percent, or \$2.8 billion are in early stage delinquency. During 2009, had the acquired portfolios not been accounted for as impaired, we would have recorded additional net charge-offs of \$7.4 billion. During 2009, the Countrywide purchased impaired loan portfolio experienced further credit deterioration due to weakness in the housing markets and the impacts of a weak economy. As such, in 2009, we recorded \$3.3 billion of provision for credit losses which was comprised of \$3.0 billion for home equity loans and \$316 million for discontinued real estate loans compared to \$750 million in 2008. In addition, we wrote down Countrywide purchased impaired loans by \$179 million during 2009 as losses on certain pools of impaired loans exceeded the original purchase accounting adjustment. The remaining purchase accounting credit adjustment of \$487 million and the allowance of \$3.9 billion results in a total credit adjustment of \$4.4 billion remaining on all pools of Countrywide purchased impaired loans at December 31, 2009. For further information on the purchased impaired loan portfolio, see *Note 6 – Outstanding Loans and Leases* to the Consolidated Financial Statements.

The following discussion provides additional information on the Countrywide purchased impaired residential mortgage, home equity and discontinued real estate loan portfolios. Since these loans were written down to fair value upon acquisition, we are reporting this information separately. In certain cases, we supplement the reported statistics on these portfolios with information that is presented as if the acquired loans had not been accounted for as impaired upon acquisition.

### Residential Mortgage

The Countrywide purchased impaired residential mortgage portfolio outstandings were \$11.1 billion at December 31, 2009 and comprised 30 percent of the total Countrywide purchased impaired loan portfolio. Those loans with a refreshed FICO score below 620 represented 33 percent of the Countrywide purchased impaired residential mortgage portfolio at December 31, 2009. Refreshed LTVs greater than 90 percent after consideration of purchase accounting adjustments and refreshed LTVs greater than 90 percent based on the unpaid principal balance represented 65 percent and 80 percent of the purchased impaired residential mortgage portfolio. The table below presents outstandings net of purchase accounting adjustments and net charge-offs had the portfolio not been accounted for as impaired upon acquisition by certain state concentrations.

**Table 21 Countrywide Purchased Impaired Loan Portfolio – Residential Mortgage State Concentrations**

(Dollars in millions)	Outstandings <sup>(1)</sup>		Purchased Impaired Portfolio Net Charge-offs <sup>(1, 2)</sup>	
	December 31		Year Ended December 31	
	2009	2008	2009	2008
California	\$ 6,142	\$ 5,633	\$ 496	\$ 177
Florida	843	776	143	103
Virginia	617	556	30	14
Maryland	278	253	13	6
Texas	166	148	5	5
Other U.S./Foreign	3,031	2,647	237	133
<b>Total Countrywide purchased impaired residential mortgage loan portfolio</b>	<b>\$11,077</b>	<b>\$10,013</b>	<b>\$ 924</b>	<b>\$ 438</b>

<sup>(1)</sup> Those loans that were originally classified as discontinued real estate loans upon acquisition and have been subsequently modified are now included in the residential mortgage outstandings shown above. Charge-offs on these loans prior to modification are excluded from the amounts shown above and shown as discontinued real estate charge-offs consistent with the product classification of the loan at the time of charge-off.

<sup>(2)</sup> Represents additional net charge-offs had the portfolio not been accounted for as impaired upon acquisition.

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### Home Equity

The Countrywide purchased impaired home equity outstandings were \$13.2 billion at December 31, 2009 and comprised 35 percent of the total Countrywide purchased impaired loan portfolio. Those loans with a refreshed FICO score below 620 represented 21 percent of the Countrywide purchased impaired home equity portfolio at December 31, 2009. Refreshed CLTVs greater than 90 percent represented 90 percent of the

purchased impaired home equity portfolio after consideration of purchase accounting adjustments and 89 percent of the purchased impaired home equity portfolio based on the unpaid principal balance at December 31, 2009. The table below presents outstandings net of purchase accounting adjustments and net charge-offs had the portfolio not been accounted for as impaired upon acquisition, by certain state concentrations.

**Table 22 Countrywide Purchased Impaired Portfolio – Home Equity State Concentrations**

(Dollars in millions)	Outstandings		Purchased Impaired Portfolio Net Charge-offs <sup>(1)</sup>	
	December 31		Year Ended December 31	
	2009	2008	2009	2008
California	\$ 4,311	\$ 5,110	\$ 1,769	\$ 744
Florida	765	910	320	186
Virginia	550	529	77	42
Arizona	542	626	203	79
Colorado	416	402	48	22
Other U.S./Foreign	6,630	6,522	1,057	421
<b>Total Countrywide purchased impaired home equity portfolio</b>	<b>\$13,214</b>	<b>\$14,099</b>	<b>\$ 3,474</b>	<b>\$ 1,494</b>

<sup>(1)</sup>Represents additional net charge-offs had the portfolio not been accounted for as impaired upon acquisition.

### Discontinued Real Estate

The Countrywide purchased impaired discontinued real estate outstandings were \$13.3 billion at December 31, 2009 and comprised 35 percent of the total Countrywide purchased impaired loan portfolio. Those loans with a refreshed FICO score below 620 represented 51 percent of the Countrywide purchased impaired discontinued real estate portfolio at December 31, 2009. Refreshed LTVs and CLTVs greater than 90 percent represented 52 percent of the purchased impaired discontinued real

estate portfolio after consideration of purchase accounting adjustments. Refreshed LTVs and CLTVs greater than 90 percent based on the unpaid principal balance represented 80 percent of the purchased impaired discontinued real estate portfolio at December 31, 2009. The table below presents outstandings net of purchase accounting adjustments and net charge-offs had the portfolio not been accounted for as impaired upon acquisition, by certain state concentrations.

**Table 23 Countrywide Purchased Impaired Loan Portfolio – Discontinued Real Estate State Concentrations**

(Dollars in millions)	Outstandings <sup>(1)</sup>		Purchased Impaired Portfolio Net Charge-offs <sup>(1, 2)</sup>	
	December 31		Year Ended December 31	
	2009	2008	2009	2008
California	\$ 7,148	\$ 9,987	\$ 1,845	\$ 1,010
Florida	1,315	1,831	393	275
Arizona	430	666	151	61
Washington	421	492	30	8
Virginia	399	580	76	48
Other U.S./Foreign	3,537	4,541	517	297
<b>Total Countrywide purchased impaired discontinued real estate loan portfolio</b>	<b>\$13,250</b>	<b>\$18,097</b>	<b>\$ 3,012</b>	<b>\$ 1,699</b>

<sup>(1)</sup>Those loans that were originally classified as discontinued real estate loans upon acquisition and have been subsequently modified are now excluded from amounts shown above. Charge-offs on these loans prior to modification are included in the amounts shown above consistent with the product classification of the loan at the time of charge-off.

<sup>(2)</sup>Represents additional net charge-offs had the portfolio not been accounted for as impaired upon acquisition.

Pay option ARMs have interest rates that adjust monthly and minimum required payments that adjust annually (subject to resetting of the loan if minimum payments are made and deferred interest limits are reached). Annual payment adjustments are subject to a 7.5 percent maximum change. To ensure that contractual loan payments are adequate to repay a loan, the fully amortizing loan payment amount is re-established after the initial five or 10-year period and again every five years thereafter. These payment adjustments are not subject to the 7.5 percent limit and may be substantial due to changes in interest rates and the addition of unpaid interest to the loan balance. Payment advantage ARMs have interest rates that are fixed for an initial period of five years. Payments are subject to reset if the minimum payments are made and deferred interest limits are reached. If interest deferrals cause the loan's principal balance

to reach a certain level within the first 10 years of the loans, the payment is reset to the interest-only payment; then at the 10-year point, the fully amortizing payment is required.

The difference between the frequency of changes in the loans' interest rates and payments along with a limitation on changes in the minimum monthly payments to 7.5 percent per year can result in payments that are not sufficient to pay all of the monthly interest charges (i.e., negative amortization). Unpaid interest charges are added to the loan balance until the loan balance increases to a specified limit, which is no more than 115 percent of the original loan amount, at which time a new monthly payment amount adequate to repay the loan over its remaining contractual life is established.



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At December 31, 2009, the unpaid principal balance of pay option loans was \$17.0 billion, with a carrying amount of \$13.4 billion, including \$12.5 billion of loans that were impaired upon acquisition. The total unpaid principal balance of pay option loans with accumulated negative amortization was \$15.2 billion and accumulated negative amortization from the original loan balance was \$1.0 billion. The percentage of borrowers electing to make only the minimum payment on option ARMs was 65 percent at December 31, 2009. We continue to evaluate our exposure to payment resets on the acquired negatively amortizing loans and have taken into consideration several assumptions regarding this evaluation (e.g., prepayment rates). We also continue to evaluate the potential for resets on the Countrywide purchased impaired pay option portfolio. Based on our expectations, 21 percent, eight percent and two percent of the pay option loan portfolio is expected to reset in 2010, 2011, and 2012, respectively. Approximately three percent are expected to reset thereafter, and approximately 66 percent are expected to repay prior to being reset.

We manage these purchased impaired portfolios, including consideration for the home retention programs to modify troubled mortgages, consistent with our other consumer real estate practices.

### Credit Card – Domestic

The consumer domestic credit card portfolio is managed in *Global Card Services*. Outstandings in the held domestic credit card loan portfolio decreased \$14.7 billion at December 31, 2009 compared to December 31, 2008 due to lower originations and transactional volume, the conversion of certain credit card loans into held-to-maturity debt securities and charge-offs partially offset by lower payment rates and new

draws on previously securitized accounts. For more information on this conversion, see *Note 8 – Securitizations* to the Consolidated Financial Statements. Net charge-offs increased \$2.4 billion in 2009 to \$6.5 billion reflecting the weak economy including elevated unemployment underemployment and higher bankruptcies. However, held domestic loans 30 days or more past due and still accruing interest decreased \$668 million from December 31, 2008 driven by improvement in the last three quarters of 2009. Due to the decline in outstandings, the percentage of balances 30 days or more past due and still accruing interest increased to 7.90 percent from 7.13 percent at December 31, 2008.

Managed domestic credit card outstandings decreased \$24.5 billion to \$129.6 billion at December 31, 2009 compared to December 31, 2008 due to lower originations and transactional volume and credit losses partially offset by lower payment rates. The \$6.9 billion increase in managed net losses to \$17.0 billion was driven by the same factors as described in the held discussion above. Managed loans that were 30 days or more past due and still accruing interest decreased \$856 million to \$9.9 billion compared to \$10.7 billion at December 31, 2008. Similar to the held discussion above, the percentage of balances 30 days or more past due and still accruing interest increased to 7.61 percent from 6.96 percent at December 31, 2008 due to the decline in outstandings.

Managed consumer credit card unused lines of credit for domestic credit card totaled \$438.5 billion at December 31, 2009 compared to \$713.0 billion at December 31, 2008. The \$274.5 billion decrease was driven primarily by account management initiatives on higher risk customers in higher risk states and inactive accounts.

The table below presents asset quality indicators by certain state concentrations for the managed credit card – domestic portfolio.

**Table 24 Credit Card – Domestic State Concentrations – Managed Basis**

	December 31				Year Ended December 31	
	Outstandings		Accruing Past Due 90 Days or More		Net Losses	
	2009	2008	2009	2008	2009	2008
(Dollars in millions)						
California	\$ 20,048	\$ 24,191	\$ 1,097	\$ 997	\$ 3,558	\$ 1,916
Florida	10,858	13,210	676	642	2,178	1,223
Texas	8,653	10,262	345	293	960	634
New York	7,839	9,368	295	263	855	531
New Jersey	5,168	6,113	189	172	559	316
Other U.S.	77,076	91,007	2,806	2,666	8,852	5,434
<b>Total credit card – domestic loan portfolio</b>	<b>\$129,642</b>	<b>\$154,151</b>	<b>\$ 5,408</b>	<b>\$ 5,033</b>	<b>\$ 16,962</b>	<b>\$ 10,054</b>

### Credit Card – Foreign

The consumer foreign credit card portfolio is managed in *Global Card Services*. Outstandings in the held foreign credit card loan portfolio increased \$4.5 billion to \$21.7 billion at December 31, 2009 compared to December 31, 2008 primarily due to the strengthening of certain foreign currencies, particularly the British pound against the U.S. dollar. Net charge-offs for the held foreign portfolio increased \$688 million to \$1.2 billion in 2009, or 6.30 percent of total average held credit card – foreign loans compared to 3.34 percent in 2008. The increase was driven primarily by weak economic conditions and higher unemployment also being experienced in Europe and Canada, including a higher level of bankruptcies/insolvencies.

Managed foreign credit card outstandings increased \$3.1 billion to \$31.2 billion at December 31, 2009 compared to December 31, 2008 primarily due to the strengthening of certain foreign currencies, partic - -

ularly the British pound against the U.S. dollar. Managed consumer foreign loans that were accruing past due 90 days or more increased to \$799 million, or 2.56 percent, compared to \$717 million, or 2.55 percent, at December 31, 2008. The dollar increase was primarily due to the strengthening of foreign currencies, especially the British pound against the U.S. dollar, further exacerbated by continuing weakness in the European and Canadian economies. Net losses for the managed foreign portfolio increased \$895 million to \$2.2 billion for 2009, or 7.43 percent of total average managed credit card – foreign loans compared to 4.17 percent in 2008. The increase in managed net losses was driven by the same factors as described in the held discussion above.

Managed consumer credit card unused lines of credit for foreign credit card totaled \$69.0 billion at December 31, 2009 compared to \$80.6 billion at December 31, 2008. The \$11.6 billion decrease was driven primarily by account management initiatives mainly on inactive accounts.

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### Direct/Indirect Consumer

At December 31, 2009, approximately 45 percent of the direct/indirect portfolio was included in *Global Banking* (dealer financial services – automotive, marine and recreational vehicle loans), 22 percent was included in *Global Card Services* (consumer personal loans and other non-real estate secured), 24 percent in *GWIM* (principally other non-real estate secured and unsecured personal loans and securities-based lending margin loans) and the remainder in *Deposits* (student loans).

Outstanding loans and leases increased \$13.8 billion to \$97.2 billion at December 31, 2009 compared to December 31, 2008 primarily due to the acquisition of Merrill Lynch which included both domestic and foreign securities-based lending margin loans, partially offset by lower outstandings in the *Global Card Services* consumer lending portfolio. Net charge-offs increased \$2.3 billion to \$5.5 billion for 2009, or 5.46 per - -

cent of total average direct/indirect loans compared to 3.77 percent for 2008. The dollar increase was concentrated in the *Global Card Services* consumer lending portfolio, driven by the effects of a weak economy including higher bankruptcies. Net charge-off ratios in the consumer lending portfolio have also been impacted by a significant slowdown in new loan production due, in part, to a tightening of underwriting criteria. Net charge-off ratios in the consumer lending portfolio were 17.75 percent during 2009, compared to 7.98 percent during 2008. The weak economy resulted in higher charge-offs in the dealer financial services portfolio. Loans that were past due 30 days or more and still accruing interest declined compared to December 31, 2008 driven by the consumer lending portfolio.

The table below presents asset quality indicators by certain state concentrations for the direct/indirect consumer loan portfolio.

**Table 25 Direct/Indirect State Concentrations**

(Dollars in millions)	December 31				Year Ended December 31	
	Outstandings		Accruing Past Due 90 Days or More		Net Charge-offs	
	2009	2008	2009	2008	2009	2008
California	\$11,664	\$10,555	\$ 228	\$ 247	\$ 1,055	\$ 601
Texas	8,743	7,738	105	88	382	222
Florida	7,559	7,376	130	145	597	334
New York	5,111	4,938	73	69	272	162
Georgia	3,165	3,212	52	48	205	115
Other U.S./Foreign	60,994	49,617	900	773	2,952	1,680
<b>Total direct/indirect loans</b>	<b>\$97,236</b>	<b>\$83,436</b>	<b>\$1,488</b>	<b>\$1,370</b>	<b>\$ 5,463</b>	<b>\$ 3,114</b>

### Other Consumer

At December 31, 2009, approximately 73 percent of the other consumer portfolio was associated with portfolios from certain consumer finance businesses that we have previously exited and are included in *All Other*. The remainder consisted of the foreign consumer loan portfolio which is mostly included in *Global Card Services* and deposit overdrafts which are recorded in *Deposits*.

### Nonperforming Consumer Loans and Foreclosed Properties Activity

Table 26 presents nonperforming consumer loans and foreclosed properties activity during 2009 and 2008. Nonperforming loans held for sale are excluded from nonperforming loans as they are recorded at either fair value or the lower of cost or fair value. Nonperforming loans do not include consumer credit card, consumer loans secured by personal property or unsecured consumer loans that are past due as these loans are generally charged off no later than the end of the month in which the account becomes 180 days past due. Real estate-secured past due loans repurchased pursuant to our servicing agreements with GNMA are not reported as nonperforming as repayments are insured by the FHA. Additionally, nonperforming loans do not include the Countrywide purchased impaired portfolio. For further information regarding nonperforming loans, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements. Total net additions to nonperforming loans in 2009 were \$11.0 billion compared to \$6.4 billion in 2008. The net additions to nonperforming loans in 2009 were driven primarily by the residential mortgage and home equity portfolios reflecting weak housing markets and economy, seasoning of vintages originated in periods of higher growth and performing loans that were accelerated into nonperforming loan status upon modification into a TDR. Nonperforming consumer real estate related TDRs as a percentage of total nonperforming consumer loans and foreclosed properties were 21 percent at

December 31, 2009 compared to five percent at December 31, 2008 due primarily to increased modification volume during the year.

The outstanding balance of a real estate secured loan that is in excess of the estimated property value, less costs to sell, is charged off no later than the end of the month in which the account becomes 180 days past due unless repayment of the loan is insured by the FHA. Property values are refreshed at least quarterly with additional charge-offs taken as needed. At December 31, 2009, \$10.7 billion, or approximately 60 percent, of the nonperforming residential mortgage loans and foreclosed properties, comprised of \$9.6 billion of nonperforming loans and \$1.1 billion of foreclosed properties, were greater than 180 days past due and had been written down to their fair values and \$790 million, or approximately 20 percent, of the nonperforming home equity loans and foreclosed properties, comprised of \$721 million of nonperforming loans and \$69 million of foreclosed properties, were greater than 180 days past due and had been written down to their fair values.

In 2009, approximately 16 percent and six percent of the net increase in nonperforming loans were from Countrywide purchased non-impaired loans and Merrill Lynch loans that deteriorated subsequent to acquisition. While we witnessed increased levels of nonperforming loans transferred to foreclosed properties due to the lifting of various foreclosure moratoriums during 2009, the net reductions to foreclosed properties of \$78 million were driven by sales of foreclosed properties and write-downs.

### Restructured Loans

As discussed above, nonperforming loans also include certain loans that have been modified in TDRs where economic concessions have been granted to borrowers who have experienced or are expected to experience financial difficulties. These concessions typically result from the Corporation's loss mitigation activities and could include reductions in the interest rate, payment extensions, forgiveness of principal, forbearance or other actions. Certain TDRs are classified as nonperforming at the time of

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restructure and may only be returned to performing status after considering the borrower's sustained repayment performance for a reasonable period, generally six months. Nonperforming TDRs, excluding those loans modified in the purchased impaired portfolio, are included in Table 26.

The pace of modifications slowed during the second half of 2009 due to the MHA and other programs where the loan goes through a trial period prior to formal modification. For more information on our modification programs, see Regulatory Initiatives beginning on page 43.

At December 31, 2009, residential mortgage TDRs were \$5.3 billion, an increase of \$4.7 billion compared to December 31, 2008. Nonperforming TDRs increased \$2.7 billion during 2009 to \$2.9 billion. Nonperforming residential mortgage TDRs comprised approximately 17 percent and three percent of total residential mortgage nonperforming loans and foreclosed properties at December 31, 2009 and 2008. Residential mortgage TDRs that were performing in accordance with their modified terms and excluded from nonperforming loans in Table 26 were \$2.3 billion, an increase of \$2.0 billion compared to December 31, 2008.

At December 31, 2009, home equity TDRs were \$2.3 billion, an increase of \$2.0 billion compared to December 31, 2008. Nonperforming TDRs increased \$1.4 billion during 2009 to \$1.7 billion. Nonperforming home equity TDRs comprised 44 percent and 11 percent of total home

equity nonperforming loans and foreclosed properties at December 31, 2009 and 2008. Home equity TDRs that were performing in accordance with their modified terms and excluded from nonperforming loans in Table 26 were \$639 million compared to \$1 million at December 31, 2008.

Discontinued real estate TDRs totaled \$78 million at December 31, 2009. This was an increase of \$7 million from December 31, 2008. Of these loans, \$43 million were nonperforming while the remaining \$35 million were classified as performing at December 31, 2009.

We also work with customers that are experiencing financial difficulty by renegotiating consumer credit card and consumer lending loans, while ensuring that we remain within Federal Financial Institutions Examination Council (FFIEC) guidelines. These renegotiated loans are excluded from Table 26 as we do not classify consumer non-real estate unsecured loans as nonperforming. For further information regarding these restructured and renegotiated loans, see *Note 6 – Outstanding Loans and Leases* to the Consolidated Financial Statements.

Certain modifications of loans in the purchased impaired loan portfolio result in removal of the loan from the purchased impaired portfolio pool and subsequent classification as a TDR. These modified loans are excluded from Table 26. For more information on TDRs, renegotiated and modified loans, refer to *Note 6 – Outstanding Loans and Leases* to the Consolidated Financial Statements.

**Table 26 Nonperforming Consumer Loans and Foreclosed Properties Activity <sup>(1)</sup>**

(Dollars in millions)	2009	2008
<b>Nonperforming loans</b>		
<b>Balance, January 1</b>	<b>\$ 9,888</b>	<b>\$ 3,442</b>
Additions to nonperforming loans:		
New nonaccrual loans and leases <sup>(2)</sup>	28,011	13,421
Reductions in nonperforming loans:		
Paydowns and payoffs	(1,459)	(527)
Returns to performing status <sup>(3)</sup>	(4,540)	(1,844)
Charge-offs <sup>(4)</sup>	(9,442)	(3,729)
Transfers to foreclosed properties	(1,618)	(875)
Transfers to loans held-for-sale	(1)	–
Total net additions to nonperforming loans	10,951	6,446
<b>Total nonperforming loans, December 31 <sup>(5)</sup></b>	<b>20,839</b>	<b>9,888</b>
<b>Foreclosed properties</b>		
<b>Balance, January 1</b>	<b>1,506</b>	<b>276</b>
Additions to foreclosed properties:		
New foreclosed properties <sup>(6, 7)</sup>	1,976	2,530
Reductions in foreclosed properties:		
Sales	(1,687)	(1,077)
Write-downs	(367)	(223)
Total net additions (reductions) to foreclosed properties	(78)	1,230
<b>Total foreclosed properties, December 31</b>	<b>1,428</b>	<b>1,506</b>
<b>Nonperforming consumer loans and foreclosed properties, December 31</b>	<b>\$22,267</b>	<b>\$11,394</b>
Nonperforming consumer loans as a percentage of outstanding consumer loans and leases	3.61%	1.68%
Nonperforming consumer loans and foreclosed properties as a percentage of outstanding consumer loans and foreclosed properties	3.85	1.93

<sup>(1)</sup>Balances do not include nonperforming LHFS of \$2.9 billion and \$3.2 billion in 2009 and 2008.

<sup>(2)</sup>2009 includes \$465 million of nonperforming loans acquired from Merrill Lynch.

<sup>(3)</sup>Consumer loans may be restored to performing status when all principal and interest is current and full repayment of the remaining contractual principal and interest is expected, or when the loan otherwise becomes well-secured and is in the process of collection. Certain TDRs are classified as nonperforming at the time of restructure and may only be returned to performing status after considering the borrower's sustained repayment performance for a reasonable period, generally six months.

<sup>(4)</sup>Our policy is not to classify consumer credit card and consumer loans not secured by real estate as nonperforming; therefore, the charge-offs on these loans have no impact on nonperforming activity.

<sup>(5)</sup>Approximately half of the 2009 and 2008 nonperforming loans are greater than 180 days past due and have been charged off to approximately 68 percent and 71 percent of original cost.

<sup>(6)</sup>Our policy is to record any losses in the value of foreclosed properties as a reduction in the allowance for credit losses during the first 90 days after transfer of a loan into foreclosed properties. Thereafter, all losses in value are recorded as noninterest expense. New foreclosed properties in the table above are net of \$818 million and \$436 million of charge-offs in 2009 and 2008 taken during the first 90 days after transfer.

<sup>(7)</sup>2009 includes \$21 million of foreclosed properties acquired from Merrill Lynch. 2008 includes \$952 million of foreclosed properties acquired from Countrywide.

## Commercial Portfolio Credit Risk Management

Credit risk management for the commercial portfolio begins with an assessment of the credit risk profile of the borrower or counterparty based on an analysis of its financial position. As part of the overall credit risk assessment, our commercial credit exposures are assigned a risk rating and are subject to approval based on defined credit approval standards. Subsequent to loan origination, risk ratings are monitored on an ongoing basis, and if necessary, adjusted to reflect changes in the financial condition, cash flow, risk profile or outlook of a borrower or counterparty. In making credit decisions, we consider risk rating, collateral, country, industry and single name concentration limits while also balancing the total borrower or counterparty relationship. Our lines of business and risk management personnel use a variety of tools to continuously monitor the ability of a borrower or counterparty to perform under its obligations. We use risk rating aggregations to measure and evaluate concentrations within portfolios. In addition, risk ratings are a factor in determining the level of assigned economic capital and the allowance for credit losses.

For information on our accounting policies regarding delinquencies, nonperforming status and charge-offs for the commercial portfolio, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

## Management of Commercial Credit Risk Concentrations

Commercial credit risk is evaluated and managed with a goal that concentrations of credit exposure do not result in undesirable levels of risk. We review, measure and manage concentrations of credit exposure by industry, product, geography and customer relationship. Distribution of loans and leases by loan size is an additional measure of portfolio risk diversification. We also review, measure and manage commercial real estate loans by geographic location and property type. In addition, within our international portfolio, we evaluate borrowings by region and by country. Tables 31, 34, 38, 39 and 40 summarize our concentrations. Additionally, we utilize syndication of exposure to third parties, loan sales, hedging and other risk mitigation techniques to manage the size and risk profile of the loan portfolio.

As part of our ongoing risk mitigation initiatives, we attempt to work with clients to modify their loans to terms that better align with their current ability to pay. In situations where an economic concession has been granted to a borrower experiencing financial difficulty, we identify these loans as TDRs.

We account for certain large corporate loans and loan commitments (including issued but unfunded letters of credit which are considered utilized for credit risk management purposes) that exceed our single name credit risk concentration guidelines under the fair value option. Lending commitments, both funded and unfunded, are actively managed and

monitored, and as appropriate, credit risk for these lending relationships may be mitigated through the use of credit derivatives, with the Corporation's credit view and market perspectives determining the size and timing of the hedging activity. In addition, credit protection is purchased to cover the funded portion as well as the unfunded portion of certain other credit exposures. To lessen the cost of obtaining our desired credit protection levels, credit exposure may be added within an industry, borrower or counterparty group by selling protection. These credit derivatives do not meet the requirements for treatment as accounting hedges. They are carried at fair value with changes in fair value recorded in other income.

## Commercial Credit Portfolio

During 2009, continued housing value declines and economic stress impacted our commercial portfolios which experienced higher levels of losses. Broad-based economic pressures, including further reductions in spending by consumers and businesses, have also impacted commercial credit quality indicators. Loan balances continued to decline in 2009 as businesses aggressively managed their working capital and production capacity by maintaining low inventories, deferring capital spending and rationalizing staff and physical locations. Additionally, borrowers increasingly accessed the capital markets for financing while reducing their use of bank credit facilities. Risk mitigation strategies further contributed to the decline in loan balances.

Increases in nonperforming loans were largely driven by continued deterioration in the commercial real estate and commercial – domestic portfolios. Nonperforming loans and utilized reservable criticized exposures increased from 2008 levels; however, during the second half of 2009 the pace of increase slowed for nonperforming loans while reservable criticized exposure declined in the fourth quarter.

The loans and leases net charge-off ratios increased across all commercial portfolios. The increase in commercial real estate net charge-offs during 2009 compared to 2008 was driven by both the non-homebuilder and homebuilder portfolios, although homebuilder portfolio net charge-offs declined in the second half of 2009 compared to the first half of 2009. The increases in commercial – domestic and commercial – foreign net charge-offs were diverse in terms of borrowers and industries.

The acquisition of Merrill Lynch increased our concentrations to certain industries and countries. For more detail on the Merrill Lynch impact, see the Industry Concentrations discussion beginning on page 70 and the Foreign Portfolio discussion beginning on page 74. There were also increased concentrations within both investment and non-investment grade exposures including monolines, and certain leveraged finance and CMBS positions.

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Table 27 presents our commercial loans and leases, and related credit quality information at December 31, 2009 and 2008. Loans that were acquired from Merrill Lynch that were considered impaired were written down to fair value upon acquisition. In addition to being included in the "Outstandings" column below, these loans are also shown separately, net of purchase accounting adjustments, for increased transparency, in the "Merrill Lynch Purchased Impaired Loan Portfolio" column. Nonperforming loans and accruing balances 90 days or more past due do not include Merrill Lynch purchased impaired loans even though the customer may be contractually past due. The portion of the Merrill Lynch port - -

folio that was not impaired at acquisition was recorded at fair value in accordance with fair value accounting. This adjustment to fair value incorporates the interest rate, creditworthiness of the borrower and market liquidity compared to the contractual terms of the non-impaired loans at the date of acquisition. For more information, see *Note 2 – Merger and Restructuring Activity* and *Note 6 – Outstanding Loans and Leases* to the Consolidated Financial Statements. The acquisition of Countrywide and related purchased impaired loan portfolio did not impact the commercial portfolios.

### Table 27 Commercial Loans and Leases

	December 31						Merrill Lynch Purchased Impaired Loan Portfolio
	Outstandings		Nonperforming <sup>(1)</sup>		Accruing Past Due 90 Days or More <sup>(2)</sup>		
	2009	2008	2009	2008	2009	2008	
(Dollars in millions)							
<b>Commercial loans and leases</b>							<b>2009</b>
Commercial – domestic <sup>(3)</sup>	\$181,377	\$200,088	\$ 4,925	\$2,040	\$ 213	\$ 381	\$ 100
Commercial real estate <sup>(4)</sup>	69,447	64,701	7,286	3,906	80	52	305
Commercial lease financing	22,199	22,400	115	56	32	23	–
Commercial – foreign	27,079	31,020	177	290	67	7	361
	<b>300,102</b>	<b>318,209</b>	<b>12,503</b>	<b>6,292</b>	<b>392</b>	<b>463</b>	<b>766</b>
Small business commercial – domestic <sup>(5)</sup>	17,526	19,145	200	205	624	640	–
Total commercial loans excluding loans measured at fair value	317,628	337,354	12,703	6,497	1,016	1,103	766
Total measured at fair value <sup>(6)</sup>	4,936	5,413	15	–	87	–	–
<b>Total commercial loans and leases</b>	<b>\$322,564</b>	<b>\$342,767</b>	<b>\$12,718</b>	<b>\$6,497</b>	<b>\$ 1,103</b>	<b>\$ 1,103</b>	<b>\$ 766</b>

<sup>(1)</sup>Nonperforming commercial loans and leases as a percentage of outstanding commercial loans and leases excluding loans measured at fair value were 4.00 percent (4.01 percent excluding the purchased impaired loan portfolio) and 1.93 percent at December 31, 2009 and 2008.

<sup>(2)</sup>Accruing commercial loans and leases past due 90 days or more as a percentage of outstanding commercial loans and leases excluding loans measured at fair value were 0.32 percent and 0.33 percent at December 31, 2009 and 2008. The December 31, 2009 ratio remained unchanged excluding the purchased impaired loan portfolio.

<sup>(3)</sup>Excludes small business commercial – domestic loans.

<sup>(4)</sup>Includes domestic commercial real estate loans of \$66.5 billion and \$63.7 billion, and foreign commercial real estate loans of \$3.0 billion and \$979 million at December 31, 2009 and 2008.

<sup>(5)</sup>Small business commercial – domestic including card related products.

<sup>(6)</sup>Certain commercial loans are accounted for under the fair value option and include commercial – domestic loans of \$3.0 billion and \$3.5 billion, commercial – foreign loans of \$1.9 billion and \$1.7 billion and commercial real estate loans of \$90 million and \$203 million at December 31, 2009 and 2008. See *Note 20 – Fair Value Measurements* to the Consolidated Financial Statements for additional discussion of fair value for certain financial instruments.

Table 28 presents net charge-offs and related ratios for our commercial loans and leases for 2009 and 2008. The reported net charge-off ratios for commercial – domestic, commercial real estate and commercial – foreign were impacted by the addition of the Merrill Lynch purchased

impaired loan portfolio as the initial fair value adjustments recorded on those loans upon acquisition would have already included the estimated credit losses.

### Table 28 Commercial Net Charge-offs and Related Ratios

	Net Charge-offs		Net Charge-off Ratios <sup>(1, 2, 3)</sup>	
	2009	2008	2009	2008
(Dollars in millions)				
<b>Commercial loans and leases</b>				
Commercial – domestic <sup>(4)</sup>	\$2,190	\$ 519	1.09%	0.26%
Commercial real estate	2,702	887	3.69	1.41
Commercial lease financing	195	60	0.89	0.27
Commercial – foreign	537	173	1.76	0.55
	<b>5,624</b>	<b>1,639</b>	<b>1.72</b>	<b>0.52</b>
Small business commercial – domestic	2,886	1,930	15.68	9.80
<b>Total commercial</b>	<b>\$8,510</b>	<b>\$3,569</b>	<b>2.47</b>	<b>1.07</b>

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

<sup>(2)</sup>Net charge-off ratios excluding the Merrill Lynch purchased impaired loan portfolio were 1.06 percent for commercial – domestic, 3.60 percent for commercial real estate, 1.49 percent for commercial – foreign, and 2.41 percent for the total commercial portfolio in 2009. These are the only product classifications impacted by the Merrill Lynch purchased impaired loan portfolio in 2009.

<sup>(3)</sup>Although the Merrill Lynch purchased impaired portfolio was recorded at fair value at acquisition on January 1, 2009, actual credit losses have exceeded the initial purchase accounting estimates. Included above are net charge-offs related to the Merrill Lynch purchased impaired portfolio in 2009 of \$55 million for commercial – domestic, \$88 million for commercial real estate and \$90 million for commercial – foreign.

<sup>(4)</sup>Excludes small business commercial – domestic.

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Table 29 presents commercial credit exposure by type for utilized, unfunded and total binding committed credit exposure. Commercial utilized credit exposure includes funded loans, standby letters of credit, financial guarantees, bankers' acceptances and commercial letters of credit for which the bank is legally bound to advance funds under prescribed conditions, during a specified period. Although funds have not been advanced, these exposure types are considered utilized for credit risk management purposes. Total commercial committed credit exposure decreased by \$10.1 billion, or one percent, at December 31, 2009 compared to December 31, 2008. The decrease was largely driven by reductions in loans and leases partially offset by an increase in derivatives due to the acquisition of Merrill Lynch.

Total commercial utilized credit exposure decreased to \$494.4 billion at December 31, 2009 compared to \$498.7 billion at December 31, 2008.

2008. Funded loans and leases declined due to limited demand for acquisition financing and capital expenditures in the large corporate and middle-market portfolios and as clients utilized the improved capital markets more extensively for their funding needs. With the economic outlook remaining uncertain, businesses are aggressively managing working capital and production capacity, maintaining low inventories and deferring capital spending. The increase in derivative assets was driven by the acquisition of Merrill Lynch substantially offset during 2009 by maturing transactions, mark-to-market adjustments from changing interest and foreign exchange rates, as well as narrower credit spreads.

The loans and leases funded utilization rate was 57 percent at December 31, 2009 compared to 58 percent at December 31, 2008.

### Table 29 Commercial Credit Exposure by Type

	December 31					
	Commercial Utilized (1, 2)		Commercial Unfunded (1, 3, 4)		Total Commercial Committed (1)	
	2009	2008	2009	2008	2009	2008
(Dollars in millions)						
Loans and leases	\$322,564	\$342,767	\$ 293,519	\$ 300,856	\$616,083	\$643,623
Derivative assets (5)	80,689	62,252	–	–	80,689	62,252
Standby letters of credit and financial guarantees	70,238	72,840	6,008	4,740	76,246	77,580
Assets held-for-sale (6)	13,473	14,206	781	183	14,254	14,389
Bankers' acceptances	3,658	3,382	16	13	3,674	3,395
Commercial letters of credit	2,958	2,974	569	791	3,527	3,765
Foreclosed properties and other	797	328	–	–	797	328
<b>Total commercial credit exposure</b>	<b>\$494,377</b>	<b>\$498,749</b>	<b>\$ 300,893</b>	<b>\$ 306,583</b>	<b>\$795,270</b>	<b>\$805,332</b>

(1) At December 31, 2009, total commercial utilized, total commercial unfunded and total commercial committed exposure include \$88.5 billion, \$25.7 billion and \$114.2 billion, respectively, related to Merrill Lynch.

(2) Total commercial utilized exposure at December 31, 2009 and 2008 includes loans and issued letters of credit accounted for under the fair value option and is comprised of loans outstanding of \$4.9 billion and \$5.4 billion, and letters of credit with a notional amount of \$1.7 billion and \$1.4 billion.

(3) Total commercial unfunded exposure at December 31, 2009 and 2008 includes loan commitments accounted for under the fair value option with a notional amount of \$25.3 billion and \$15.5 billion.

(4) Excludes unused business card lines which are not legally binding.

(5) Derivative assets are carried at fair value, reflect the effects of legally enforceable master netting agreements, and have been reduced by cash collateral of \$58.4 billion and \$34.8 billion at December 31, 2009 and 2008. Not reflected in utilized and committed exposure is additional derivative collateral held of \$16.2 billion and \$13.4 billion which consists primarily of other marketable securities at December 31, 2009 and 2008.

(6) Total commercial committed assets held-for-sale exposure consists of \$9.0 billion and \$12.1 billion of commercial LHFS exposure (e.g., commercial mortgage and leveraged finance) and \$5.3 billion and \$2.3 billion of assets held-for-sale exposure at December 31, 2009 and 2008.

Table 30 presents commercial utilized reservable criticized exposure by product type. Criticized exposure corresponds to the Special Mention, Substandard and Doubtful asset categories defined by regulatory authorities. In addition to reservable loans and leases, excluding those accounted for under the fair value option, exposure includes SBLCs, financial guarantees, bankers' acceptances and commercial letters of credit for which we are legally bound to advance funds under prescribed conditions, during a specified period. Although funds have not been advanced, these exposure types are considered utilized for credit risk management purposes. Total commercial utilized reservable criticized

exposure rose by \$21.7 billion primarily due to increases in commercial real estate and commercial – domestic. Commercial real estate increased \$10.0 billion primarily due to the non-homebuilder portfolio which has been impacted by the weak economy partially offset by a decrease in the homebuilder portfolio. The \$9.3 billion increase in commercial – domestic reflects deterioration across various lines of business and industries, primarily in *Global Banking*. At December 31, 2009, approximately 85 percent of the loans within criticized reservable utilized exposure are secured.

### Table 30 Commercial Utilized Reservable Criticized Exposure

	December 31			
	2009		2008	
	Amount	Percent (1)	Amount	Percent (1)
(Dollars in millions)				
Commercial – domestic (2)	\$ 28,259	11.66%	\$18,963	7.20%
Commercial real estate	23,804	32.13	13,830	19.73
Commercial lease financing	2,229	10.04	1,352	6.03
Commercial – foreign	2,605	7.12	1,459	3.65
	56,897	15.17	35,604	8.99
Small business commercial – domestic	1,789	10.18	1,333	6.94
<b>Total commercial utilized reservable criticized exposure</b>	<b>\$ 58,686</b>	<b>14.94</b>	<b>\$36,937</b>	<b>8.90</b>

(1) Percentages are calculated as commercial utilized reservable criticized exposure divided by total commercial utilized reservable exposure for each exposure category.

(2) Excludes small business commercial – domestic exposure.

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### Commercial – Domestic (excluding Small Business)

At December 31, 2009, approximately 81 percent of the commercial – domestic loan portfolio, excluding small business, was included in *Global Banking* (business banking, middle-market and large multinational corporate loans and leases) and *Global Markets* (acquisition, bridge financing and institutional investor services). The remaining 19 percent was mostly in *GWIM* (business-purpose loans for wealthy individuals). Outstanding commercial – domestic loans, excluding loans accounted for under the fair value option, decreased driven primarily by reduced customer demand within *Global Banking*, partially offset by the acquisition of Merrill Lynch. Nonperforming commercial – domestic loans increased \$2.9 billion compared to December 31, 2008. Net charge-offs increased \$1.7 billion in 2009 compared to 2008. The increases in nonperforming loans and net charge-offs were broad-based in terms of borrowers and industries. The acquisition of Merrill Lynch accounts for a portion of the increase in nonperforming loans and reservable criticized exposure.

### Commercial Real Estate

The commercial real estate portfolio is predominantly managed in *Global Banking* and consists of loans made primarily to public and private developers, homebuilders and commercial real estate firms. Outstanding loans and leases, excluding loans accounted for under the fair value option, increased \$4.7 billion at December 31, 2009 compared to December 31, 2008, primarily due to the acquisition of Merrill Lynch partially offset by

portfolio attrition and losses. The portfolio remains diversified across property types and geographic regions. California and Florida represent the two largest state concentrations at 21 percent and seven percent for loans and leases at December 31, 2009. For more information on geographic or property concentrations, refer to Table 31.

For the year, nonperforming commercial real estate loans increased \$3.4 billion and utilized reservable criticized exposure increased \$10.0 billion from December 31, 2008 across most property types and was attributable to the continuing impact of the housing slowdown, elevated unemployment and deteriorating vacancy and rental rates across most non-homebuilder property types and geographies during 2009. The increase in nonperforming loans was driven by the retail, office, multi-use, and land and land development portfolios. The increase in utilized reservable criticized exposure was driven by the office, retail and multi-family rental property types, offset by a \$1.9 billion decrease in the homebuilder portfolio. For 2009, net charge-offs were up \$1.8 billion compared to 2008 driven by increases in net charge-offs in both the non-homebuilder and the homebuilder portfolios.

The following table presents outstanding commercial real estate loans by geographic region and property type. Commercial real estate primarily includes commercial loans and leases secured by non owner-occupied real estate which are dependent on the sale or lease of the real estate as the primary source of repayment.

**Table 31 Outstanding Commercial Real Estate Loans**

	December 31	
	2009	2008
(Dollars in millions)		
<b>By Geographic Region <sup>(1)</sup></b>		
California	\$ 14,273	\$ 11,270
Northeast	11,661	9,747
Southwest	8,183	6,698
Southeast	6,830	7,365
Midwest	6,505	7,447
Florida	4,568	5,146
Illinois	4,375	5,451
Midsouth	3,332	3,475
Northwest	3,097	3,022
Geographically diversified <sup>(2)</sup>	3,238	2,563
Non-U.S.	2,994	979
Other <sup>(3)</sup>	481	1,741
<b>Total outstanding commercial real estate loans <sup>(4)</sup></b>	<b>\$ 69,537</b>	<b>\$ 64,904</b>
<b>By Property Type</b>		
Office	\$ 12,511	\$ 10,388
Multi-family rental	11,169	8,177
Shopping centers/retail	9,519	9,293
Homebuilder <sup>(5)</sup>	7,250	10,987
Hotels/motels	6,946	2,513
Multi-use	5,924	3,444
Industrial/warehouse	5,852	6,070
Land and land development	3,215	3,856
Other <sup>(6)</sup>	7,151	10,176
<b>Total outstanding commercial real estate loans <sup>(4)</sup></b>	<b>\$ 69,537</b>	<b>\$ 64,904</b>

<sup>(1)</sup>Distribution is based on geographic location of collateral.

<sup>(2)</sup>The geographically diversified category is comprised primarily of unsecured outstandings to real estate investment trusts and national home builders whose portfolios of properties span multiple geographic regions.

<sup>(3)</sup>Primarily includes properties in the states of Colorado, Utah, Hawaii, Wyoming and Montana.

<sup>(4)</sup>Includes commercial real estate loans accounted for under the fair value option of \$90 million and \$203 million at December 31, 2009 and 2008.

<sup>(5)</sup>Homebuilder includes condominiums and residential land.

<sup>(6)</sup>Represents loans to borrowers whose primary business is commercial real estate, but the exposure is not secured by the listed property types or is unsecured.

During 2009, deterioration within the commercial real estate portfolio shifted from the homebuilder portfolio to the non-homebuilder portfolio. Non-homebuilder credit quality indicators and appraised values weakened in 2009 due to deteriorating property fundamentals and increased loss severities, whereas homebuilder credit quality indicators, while remaining elevated, began to stabilize. The non-homebuilder portfolio remains most

at risk as occupancy and rental rates continued to deteriorate due to the current economic environment and restrained business hiring and capital investment. We have adopted a number of proactive risk mitigation initiatives to reduce utilized and potential exposure in the commercial real estate portfolios.

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The following table presents commercial real estate credit quality data by non-homebuilder and homebuilder property types. Commercial real estate primarily includes commercial loans secured by non owner-occu - -

pled real estate which is dependent on the sale or lease of the real estate as the primary source of repayment.

### Table 32 Commercial Real Estate Credit Quality Data

(Dollars in millions)	December 31				Year Ended December 31			
	Nonperforming Loans and Foreclosed Properties <sup>(1)</sup>		Utilized Reservable Criticized Exposure <sup>(2)</sup>		Net Charge-offs		Net Charge-off Ratios <sup>(3)</sup>	
	2009	2008	2009	2008	2009	2008	2009	2008
<b>Commercial real estate – non-homebuilder</b>								
Office	\$ 729	\$ 95	\$ 3,822	\$ 801	\$ 249	\$ –	2.01%	–%
Multi-family rental	546	232	2,496	822	217	13	1.96	0.18
Shopping centers/retail	1,157	204	3,469	1,442	239	10	2.30	0.11
Hotels/motels	160	9	1,140	67	5	4	0.08	0.09
Industrial/warehouse	442	91	1,757	464	82	–	1.34	–
Multi-use	416	17	1,578	409	146	24	2.58	0.38
Land and land development	968	455	1,657	1,281	286	–	8.00	–
Other <sup>(4)</sup>	417	88	2,210	973	140	22	1.72	0.42
<b>Total non-homebuilder</b>	<b>4,835</b>	<b>1,191</b>	<b>18,129</b>	<b>6,259</b>	<b>1,364</b>	<b>73</b>	<b>2.13</b>	<b>0.15</b>
<b>Commercial real estate – homebuilder <sup>(5)</sup></b>	<b>3,228</b>	<b>3,036</b>	<b>5,675</b>	<b>7,571</b>	<b>1,338</b>	<b>814</b>	<b>14.41</b>	<b>6.25</b>
<b>Total commercial real estate</b>	<b>\$ 8,063</b>	<b>\$ 4,227</b>	<b>\$23,804</b>	<b>\$13,830</b>	<b>\$2,702</b>	<b>\$887</b>	<b>3.69</b>	<b>1.41</b>

<sup>(1)</sup>Includes commercial foreclosed properties of \$777 million and \$321 million at December 31, 2009 and 2008.

<sup>(2)</sup>Utilized reservable criticized exposure corresponds to the Special Mention, Substandard and Doubtful asset categories defined by regulatory authorities. This is defined as loans, excluding those accounted for under the fair value option, SBLCs and bankers' acceptances.

<sup>(3)</sup>Net charge-off ratios are calculated as net charge-offs divided by average outstanding loans excluding loans accounted for under the fair value option during the year for each loan and lease category.

<sup>(4)</sup>Represents loans to borrowers whose primary business is commercial real estate, but the exposure is not secured by the listed property types or is unsecured.

<sup>(5)</sup>Homebuilder includes condominiums and residential land.

At December 31, 2009, we had total committed non-homebuilder exposure of \$84.4 billion compared to \$84.1 billion at December 31, 2008. The increase was due to the Merrill Lynch acquisition, largely offset by repayments and net charge-offs. Non-homebuilder nonperforming loans and foreclosed properties were \$4.8 billion, or 7.73 percent of total non-homebuilder loans and foreclosed properties at December 31, 2009 compared to \$1.2 billion, or 2.21 percent at December 31, 2008, with the increase driven by deterioration in the shopping center/retail, office, and land and land development portfolios.

Non-homebuilder utilized reservable criticized exposure increased \$11.9 billion to \$18.1 billion, or 27.27 percent of total non-homebuilder utilized reservable exposure at December 31, 2009 compared to \$6.3 billion, or 10.66 percent, at December 31, 2008. The increase was driven primarily by office, shopping center/retail and multi-family rental property types which have been the most adversely affected by high unemployment and the slowdown in consumer spending.

For the non-homebuilder portfolio, net charge-offs increased \$1.3 billion for 2009 compared to 2008 with the increase concentrated in non-homebuilder land and land development, office, shopping center/retail and multi-family rental property types.

Within our total non-homebuilder exposure, at December 31, 2009, we had total committed non-homebuilder construction and land development exposure of \$24.5 billion compared to \$27.8 billion at December 31, 2008. Non-homebuilder construction and land development exposure is mostly secured and diversified across property types and geographies. Assets in the non-homebuilder construction and land development portfolio face significant challenges in the current rental market. Weak rental demand and cash flows and declining property valuations have resulted in increased levels of reservable criticized exposure and nonperforming loans and foreclosed properties. Nonperforming loans and foreclosed properties and utilized reservable criticized exposure for

the non-homebuilder construction and land development portfolio increased \$2.0 billion and \$6.1 billion from December 31, 2008 to \$2.6 billion and \$8.9 billion at December 31, 2009.

At December 31, 2009, we had committed homebuilder exposure of \$10.4 billion compared to \$16.2 billion at December 31, 2008 of which \$7.3 billion and \$11.0 billion were funded secured loans. The decline in homebuilder committed exposure was driven by repayments, charge-offs, reduced new home construction and continued risk mitigation initiatives. Homebuilder nonperforming loans and foreclosed properties stabilized due to the slowdown in the rate of home price declines. Homebuilder utilized reservable criticized exposure decreased by \$1.9 billion driven by higher net charge-offs. The nonperforming loans, leases and foreclosed properties and the utilized reservable criticized ratios for the homebuilder portfolio were 42.16 percent and 74.44 percent at December 31, 2009 compared to 27.07 percent and 66.33 percent at December 31, 2008. Lower loan balances and exposures in 2009 drove a portion of the increase in the ratios. Net charge-offs for the homebuilder portfolio increased \$524 million in 2009 from 2008.

#### Commercial – Foreign

The commercial – foreign loan portfolio is managed primarily in *Global Banking*. Outstanding loans, excluding loans accounted for under the fair value option, decreased due to repayments as borrowers accessed the capital markets to refinance bank debt and aggressively managed working capital and investment spending, partially offset by the acquisition of Merrill Lynch. Reduced merger and acquisition activity was also a factor contributing to modest new loan origination. Net charge-offs increased primarily due to deterioration in the portfolio, particularly in financial services, consumer dependent and housing-related sectors. For additional information on the commercial – foreign portfolio, refer to the Foreign Portfolio discussion beginning on page 74.



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### Small Business Commercial – Domestic

The small business commercial – domestic loan portfolio is comprised of business card and small business loans primarily managed in *Global Card Services*. In 2009, small business commercial – domestic net charge-offs increased \$956 million from 2008. The portfolio deterioration was primarily driven by the impacts of a weakened economy. Approximately 77 percent of the small business commercial – domestic net charge-offs for 2009 were credit card related products, compared to 75 percent in 2008.

### Commercial Loans Carried at Fair Value

The portfolio of commercial loans accounted for under the fair value option is managed in *Global Markets*. The \$477 million decrease in the fair value loan portfolio in 2009 was driven primarily by reduced corporate borrowings under bank credit facilities. We recorded net gains of \$515 million resulting from changes in the fair value of the loan portfolio during 2009 compared to net losses of \$780 million for 2008. These gains and losses were primarily attributable to changes in instrument-specific credit risk and were predominantly offset by net gains or net losses from hedging activities.

In addition, unfunded lending commitments and letters of credit had an aggregate fair value of \$950 million and \$1.1 billion at December 31, 2009 and 2008 and were recorded in accrued expenses and other liabilities. The associated aggregate notional amount of unfunded lending commitments and letters of credit accounted for under the fair value

option was \$27.0 billion and \$16.9 billion at December 31, 2009 and 2008 with the increase driven by the acquisition of Merrill Lynch. Net gains resulting from changes in fair value of commitments and letters of credit of \$1.4 billion were recorded during 2009 compared to net losses of \$473 million for 2008. These gains and losses were primarily attributable to changes in instrument-specific credit risk.

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

The following table presents the additions and reductions to nonperforming loans, leases and foreclosed properties in the commercial portfolio during 2009 and 2008. The \$16.2 billion in new nonaccrual loans and leases for 2009 was primarily attributable to increases within non-homebuilder commercial real estate property types such as shopping centers/retail, office, land and land development, and multi-use and within commercial – domestic excluding small business, where the increases were broad-based across industries and lines of business. Approximately 90 percent of commercial nonperforming loans, leases and foreclosed properties are secured and approximately 35 percent are contractually current. In addition, commercial nonperforming loans are carried at approximately 75 percent of their unpaid principal balance before consideration of the allowance for loan and lease losses as the carrying value of these loans has been reduced to the estimated net realizable value.

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

	2009	2008
(Dollars in millions)		
<b>Nonperforming loans and leases</b>		
<b>Balance, January 1</b>	<b>\$ 6,497</b>	<b>\$ 2,155</b>
Additions to nonperforming loans and leases:		
Merrill Lynch balance, January 1, 2009	402	–
New nonaccrual loans and leases	16,190	8,110
Advances	339	154
Reductions in nonperforming loans and leases:		
Paydowns and payoffs	(3,075)	(1,467)
Sales	(630)	(45)
Returns to performing status <sup>(3)</sup>	(461)	(125)
Charge-offs <sup>(4)</sup>	(5,626)	(1,900)
Transfers to foreclosed properties	(857)	(372)
Transfers to loans held-for-sale	(76)	(13)
Total net additions to nonperforming loans and leases	6,206	4,342
<b>Total nonperforming loans and leases, December 31</b>	<b>12,703</b>	<b>6,497</b>
<b>Foreclosed properties</b>		
<b>Balance, January 1</b>	<b>321</b>	<b>75</b>
Additions to foreclosed properties:		
New foreclosed properties	857	372
Reductions in foreclosed properties:		
Sales	(310)	(110)
Write-downs	(91)	(16)
Total net additions to foreclosed properties	456	246
<b>Total foreclosed properties, December 31</b>	<b>777</b>	<b>321</b>
<b>Nonperforming commercial loans, leases and foreclosed properties, December 31</b>	<b>\$13,480</b>	<b>\$ 6,818</b>
Nonperforming commercial loans and leases as a percentage of outstanding commercial loans and leases <sup>(5)</sup>	4.00%	1.93%
Nonperforming commercial loans, leases and foreclosed properties as a percentage of outstanding commercial loans, leases and foreclosed properties <sup>(5)</sup>	4.24	2.02

<sup>(1)</sup>Balances do not include nonperforming LHFS of \$4.5 billion and \$852 million at December 31, 2009 and 2008.

<sup>(2)</sup>Includes small business commercial – domestic activity.

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

<sup>(4)</sup>Business card loans are not classified as nonperforming; therefore, the charge-offs on these loans have no impact on nonperforming activity.

<sup>(5)</sup>Outstanding commercial loans and leases exclude loans accounted for under the fair value option.

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At December 31, 2009, the total commercial TDR balance was \$577 million. Nonperforming TDRs increased \$442 million while performing TDRs increased \$78 million during 2009. Nonperforming TDRs of \$486 million are included in Table 33.

### Industry Concentrations

Table 34 presents commercial committed and commercial utilized credit exposure by industry and the total net credit default protection purchased to cover the funded and the unfunded portion of certain credit exposure. Our commercial credit exposure is diversified across a broad range of industries.

Industry limits are used internally to manage industry concentrations and are based on committed exposure and capital usage that are allocated on an industry-by-industry basis. A risk management framework is in place to set and approve industry limits, as well as to provide ongoing monitoring. The Credit Risk Committee (CRC) oversees industry limits governance.

Total commercial committed exposure decreased \$10.1 billion in 2009 across most industries. Those industries that experienced increases in total commercial committed exposure in 2009 were driven by the Merrill Lynch acquisition.

Diversified financials, our largest industry concentration, experienced an increase in committed exposure of \$7.6 billion, or seven percent at December 31, 2009 compared to 2008. The total committed credit exposure increase was driven by the Merrill Lynch portfolio which contributed \$34.7 billion, largely the result of \$28.8 billion in capital markets industry exposure, primarily comprised of derivatives. This was offset, in part, by a reduction in legacy Bank of America positions of \$27.1 billion, the majority of which came from a \$21.2 billion reduction in capital markets industry exposure including the cancellation of \$8.8 billion in facilities to legacy Merrill Lynch.

Real estate, our second largest industry concentration, experienced a decrease in committed exposure of \$12.4 billion, or 12 percent at December 31, 2009 compared to 2008. An \$18.6 billion decrease in legacy Bank of America committed exposure, driven primarily by decreases in homebuilder, unsecured commercial real estate and commercial construction and land development exposure, was partially offset by the acquisition of Merrill Lynch. Real estate construction and land development exposure comprised 31 percent of the total real estate industry committed exposure at December 31, 2009. For more information on the commercial real estate and related portfolios, refer to the commercial real estate discussion beginning on page 67.

The insurance and utilities committed exposure increased primarily due to the acquisition of Merrill Lynch. Refer to the *Global Markets* discussion beginning on page 35 and to the monoline and related exposure discussion below for more information.

Retailing committed exposure declined 16 percent at December 31, 2009 compared to 2008, driven by the retirement of several large retail exposures and paydowns as retailers and wholesalers worked to reduce inventory levels.

### Monoline and Related Exposure

Monoline exposure is reported in the insurance industry and managed under insurance portfolio industry limits. Direct loan exposure to monolines consisted of revolvers in the amount of \$41 million and \$126 million at December 31, 2009 and 2008.

We have indirect exposure to monolines primarily in the form of guarantees supporting our loans, investment portfolios, securitizations, credit-enhanced securities as part of our public finance business and other selected products. Such indirect exposure exists when we purchase credit protection from monolines to hedge all or a portion of the credit risk on certain credit exposures including loans and CDOs. We underwrite our public finance exposure by evaluating the underlying securities.

We also have indirect exposure to monoline financial guarantors, primarily in the form of guarantees supporting our mortgage and other loan sales. Indirect exposure may exist when we purchase credit protection from monoline financial guarantors to hedge all or a portion of the credit risk on certain mortgage and other loan exposures. A loss may occur when we are required to repurchase a loan and the market value of the loan has declined or when we are required to indemnify or provide recourse for a guarantor's loss. We have experienced and continue to experience increasing repurchase demands from and disputes with monoline financial guarantors. We expect to contest such demands that we do not believe are valid. In the event that we are required to repurchase loans that have been the subject of repurchase demands or otherwise provide indemnification or other recourse, this could significantly increase our losses and thereby affect our future earnings. For further information regarding representations and warranties, see *Note 8 – Securitizations* to the Consolidated Financial Statements and Item 1A., Risk Factors.

Monoline derivative credit exposure at December 31, 2009 had a notional value of \$42.6 billion compared to \$9.6 billion at December 31, 2008. Mark-to-market monoline derivative credit exposure was \$11.1 billion at December 31, 2009 compared to \$2.2 billion at December 31, 2008, driven by the addition of Merrill Lynch exposures as well as credit deterioration related to underlying counterparties and spread widening in both wrapped CDO and structured finance related exposures. At December 31, 2009, the counterparty credit valuation adjustment related to monoline derivative exposure was \$6.0 billion, which reduced our net mark-to-market exposure to \$5.1 billion. We do not hold collateral against these derivative exposures. For more information on our monoline exposure, see the *Global Markets* discussion beginning on page 35.

We also have indirect exposure as we invest in securities where the issuers have purchased wraps (i.e., insurance). For example, municipalities and corporations purchase protection in order to enhance their pricing power which has the effect of reducing their cost of borrowing. If the ratings agencies downgrade the monolines, the credit rating of the bond may fall and may have an adverse impact on the market value of the security. In the case of default, we first look to the underlying securities and then to recovery on the purchased insurance. Investments in securities issued by municipalities and corporations with purchased wraps at December 31, 2009 and 2008 had a notional value of \$5.0 billion and \$6.0 billion. Mark-to-market investment exposure was \$4.9 billion at December 31, 2009 compared to \$5.7 billion at December 31, 2008.

**Table 34 Commercial Credit Exposure by Industry** (1, 2, 3)

	December 31			
	Commercial Utilized		Total Commercial Committed	
	2009	2008	2009	2008
(Dollars in millions)				
Diversified financials	\$ 68,876	\$ 50,327	\$ 110,948	\$ 103,306
Real estate <sup>(4)</sup>	75,049	79,766	91,479	103,889
Government and public education	44,151	39,386	61,446	58,608
Capital goods	23,834	27,588	47,413	52,522
Healthcare equipment and services	29,584	31,280	46,370	46,785
Consumer services	28,517	28,715	44,164	43,948
Retailing	23,671	30,736	42,260	50,102
Commercial services and supplies	23,892	24,095	34,646	34,867
Individuals and trusts	25,191	22,752	33,678	33,045
Materials	16,373	22,825	32,898	38,105
Insurance	20,613	11,223	28,033	17,855
Food, beverage and tobacco	14,812	17,257	27,985	28,521
Utilities	9,217	8,230	25,229	19,272
Energy	9,605	11,885	23,619	22,732
Banks	20,299	22,134	23,384	26,493
Media	11,236	8,939	22,832	19,301
Transportation	13,724	13,050	19,597	18,561
Religious and social organizations	8,920	9,539	11,371	12,576
Pharmaceuticals and biotechnology	2,875	3,721	10,343	10,111
Consumer durables and apparel	4,374	6,219	9,829	10,862
Technology hardware and equipment	3,135	3,971	9,671	10,371
Telecommunication services	3,558	3,681	9,478	8,036
Software and services	3,216	4,093	9,306	9,590
Food and staples retailing	3,680	4,282	6,562	7,012
Automobiles and components	2,379	3,093	5,339	6,081
Other	3,596	9,962	7,390	12,781
<b>Total commercial credit exposure by industry</b>	<b>\$494,377</b>	<b>\$498,749</b>	<b>\$ 795,270</b>	<b>\$ 805,332</b>
Net credit default protection purchased on total commitments <sup>(5)</sup>			<b>\$ (19,025)</b>	<b>\$ (9,654)</b>

<sup>(1)</sup>Total commercial utilized and total commercial committed exposure includes loans and letters of credit accounted for under the fair value option and are comprised of loans outstanding of \$4.9 billion and \$5.4 billion, and issued letters of credit with a notional amount of \$1.7 billion and \$1.4 billion at December 31, 2009 and 2008. In addition, total commercial committed exposure includes unfunded loan commitments with a notional amount of \$25.3 billion and \$15.5 billion at December 31, 2009 and 2008.

<sup>(2)</sup>Includes small business commercial – domestic exposure.

<sup>(3)</sup>At December 31, 2009, total commercial utilized and total commercial committed exposure included \$88.5 billion and \$114.2 billion of exposure due to the acquisition of Merrill Lynch which included \$31.7 billion and \$34.7 billion in diversified financials and \$12.3 billion and \$13.0 billion in insurance with the remaining exposure spread across various industries.

<sup>(4)</sup>Industries are viewed from a variety of perspectives to best isolate the perceived risks. For purposes of this table, the real estate industry is defined based upon the borrowers' or counterparties' primary business activity using operating cash flow and primary source of repayment as key factors.

<sup>(5)</sup>Represents net notional credit protection purchased. Refer to the Risk Mitigation discussion beginning on page 71 for additional information.

## Risk Mitigation

Credit protection is purchased to cover the funded portion as well as the unfunded portion of certain credit exposure. To lessen the cost of obtaining our desired credit protection levels, credit exposure may be added within an industry, borrower or counterparty group by selling protection.

At December 31, 2009 and 2008, we had net notional credit default protection purchased in our credit derivatives portfolio to hedge our funded and unfunded exposures for which we elected the fair value option as well as certain other credit exposures of \$19.0 billion and \$9.7 billion. The increase from December 31, 2008 is primarily driven by the acquisition of Merrill Lynch. The mark-to-market impacts, including the cost of net credit default protection hedging our credit exposure, resulted in net

losses of \$2.9 billion in 2009 compared to net gains of \$993 million in 2008. The average Value-at-Risk (VAR) for these credit derivative hedges was \$76 million in 2009 compared to \$24 million in 2008. The average VAR for the related credit exposure was \$130 million in 2009 compared to \$57 million in 2008. The year-over-year increase in VAR was driven by the combination of the Merrill Lynch and Bank of America businesses in 2009. There is a diversification effect between the net credit default protection hedging our credit exposure and the related credit exposure such that the combined average VAR was \$89 million in 2009. Refer to the Trading Risk Management discussion beginning on page 80 for a description of our VAR calculation for the market-based trading portfolio.

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Tables 35 and 36 present the maturity profiles and the credit exposure debt ratings of the net credit default protection portfolio at December 31, 2009 and 2008. The distribution of debt rating for net

notional credit default protection purchased is shown as a negative and the net notional credit protection sold is shown as a positive amount.

**Table 35 Net Credit Default Protection by Maturity Profile**

	December 31	
	2009	2008
Less than or equal to one year	16%	1%
Greater than one year and less than or equal to five years	81	92
Greater than five years	3	7
<b>Total net credit default protection</b>	<b>100%</b>	<b>100%</b>

**Table 36 Net Credit Default Protection by Credit Exposure Debt Rating <sup>(1)</sup>**

(Dollars in millions)

Ratings <sup>(2)</sup>	December 31			
	2009		2008	
	Net Notional	Percent of Total	Net Notional	Percent of Total
AAA	\$ 15	(0.1)%	\$ 30	(0.3)%
AA	(344)	1.8	(103)	1.1
A	(6,092)	32.0	(2,800)	29.0
BBB	(9,573)	50.4	(4,856)	50.2
BB	(2,725)	14.3	(1,948)	20.2
B	(835)	4.4	(579)	6.0
CCC and below	(1,691)	8.9	(278)	2.9
NR <sup>(3)</sup>	2,220	(11.7)	880	(9.1)
<b>Total net credit default protection</b>	<b>\$ (19,025)</b>	<b>100.0%</b>	<b>\$ (9,654)</b>	<b>100.0%</b>

<sup>(1)</sup>Ratings are refreshed on a quarterly basis.

<sup>(2)</sup>The Corporation considers ratings of BBB- or higher to meet the definition of investment grade.

<sup>(3)</sup>In addition to names which have not been rated, "NR" includes \$2.3 billion and \$948 million in net credit default swaps index positions at December 31, 2009 and 2008. While index positions are principally investment grade, credit default swaps indices include names in and across each of the ratings categories.

In addition to our net notional credit default protection purchased to cover the funded and unfunded portion of certain credit exposures, credit derivatives are used for market-making activities for clients and establishing positions intended to profit from directional or relative value changes. We execute the majority of our credit derivative positions in the over-the-counter market with large, multinational financial institutions, including broker/dealers and, to a lesser degree, with a variety of other investors. Because these transactions are executed in the over-the-counter market, we are subject to settlement risk. We are also

subject to credit risk in the event that these counterparties fail to perform under the terms of these contracts. In most cases, credit derivative transactions are executed on a daily margin basis. Therefore, events such as a credit downgrade (depending on the ultimate rating level) or a breach of credit covenants would typically require an increase in the amount of collateral required of the counterparty (where applicable), and/or allow us to take additional protective measures such as early termination of all trades.

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The notional amounts presented in Table 37 represent the total contract/notional amount of credit derivatives outstanding and include both purchased and written credit derivatives. The credit risk amounts are measured as the net replacement cost in the event the counterparties with contracts in a gain position to us fail to perform under the terms of those contracts. The addition of Merrill Lynch drove the increase in counterparty credit risk for purchased credit derivatives and the increase in the contract/notional amount. For information on the performance risk of our written credit derivatives, see *Note 4 – Derivatives* to the Consolidated Financial Statements.

The credit risk amounts discussed above and noted in the table below take into consideration the effects of legally enforceable master netting agreements while amounts disclosed in *Note 4 – Derivatives* to the Consolidated Financial Statements are shown on a gross basis. Credit risk reflects the potential benefit from offsetting exposure to non-credit derivative products with the same counterparties that may be netted upon the occurrence of certain events, thereby reducing the Corporation's overall exposure.

**Table 37 Credit Derivatives**

	December 31			
	2009		2008	
(Dollars in millions)	Contract/Notional	Credit Risk	Contract/Notional	Credit Risk
<b>Credit derivatives</b>				
<b>Purchased credit derivatives:</b>				
Credit default swaps	\$ 2,800,539	\$ 25,964	\$ 1,025,850	\$ 11,772
Total return swaps/other	21,685	1,740	6,601	1,678
<b>Total purchased credit derivatives</b>	<b>2,822,224</b>	<b>27,704</b>	<b>1,032,451</b>	<b>13,450</b>
<b>Written credit derivatives:</b>				
Credit default swaps	2,788,760	–	1,000,034	–
Total return swaps/other	33,109	–	6,203	–
<b>Total written credit derivatives</b>	<b>2,821,869</b>	<b>–</b>	<b>1,006,237</b>	<b>–</b>
<b>Total credit derivatives</b>	<b>\$ 5,644,093</b>	<b>\$ 27,704</b>	<b>\$ 2,038,688</b>	<b>\$ 13,450</b>

### Counterparty Credit Risk Valuation Adjustments

We record a counterparty credit risk valuation adjustment on certain derivatives assets, including our credit default protection purchased, in order to properly reflect the credit quality of the counterparty. These adjustments are necessary as the market quotes on derivatives do not fully reflect the credit risk of the counterparties to the derivative assets. We consider collateral and legally enforceable master netting agreements that mitigate our credit exposure to each counterparty in determining the counterparty credit risk valuation adjustment. All or a portion of these counterparty credit risk valuation adjustments are reversed or otherwise

adjusted in future periods due to changes in the value of the derivative contract, collateral and creditworthiness of the counterparty.

During 2009, credit valuation gains (losses) were recognized in trading account profits (losses) related to counterparty credit risk on derivative assets. For additional information on gains or losses related to the counterparty credit risk on derivative assets, refer to *Note 4 – Derivatives* to the Consolidated Financial Statements. For information on our monoline counterparty credit risk, see the discussion beginning on pages 37 and 70, and for information on our CDO-related counterparty credit risk, see the *Global Markets* discussion beginning on page 35.

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**Foreign Portfolio**

Our foreign credit and trading portfolio is subject to country risk. We define country risk as the risk of loss from unfavorable economic and political conditions, currency fluctuations, social instability and changes in government policies. A risk management framework is in place to measure, monitor and manage foreign risk and exposures. Management oversight of country risk including cross-border risk is provided by the Regional Risk Committee, a subcommittee of the CRC.

The following table sets forth total foreign exposure broken out by region at December 31, 2009 and 2008. Foreign exposure includes

credit exposure net of local liabilities, securities, and other investments issued by or domiciled in countries other than the U.S. Total foreign exposure can be adjusted for externally guaranteed outstandings and certain collateral types. Exposures which are assigned external guarantees are reported under the country of the guarantor. Exposures with tangible collateral are reflected in the country where the collateral is held. For securities received, other than cross-border resale agreements, outstandings are assigned to the domicile of the issuer of the securities. Resale agreements are generally presented based on the domicile of the counterparty consistent with FFIEC reporting requirements.

**Table 38 Regional Foreign Exposure** <sup>(1, 2, 3)</sup>

	December 31	
	2009	2008
(Dollars in millions)		
Europe	\$ 170,796	\$ 66,472
Asia Pacific	47,645	39,774
Latin America	19,516	11,378
Middle East and Africa	3,906	2,456
Other	15,799	10,988
<b>Total</b>	<b>\$ 257,662</b>	<b>\$ 131,068</b>

<sup>(1)</sup>Local funding or liabilities are subtracted from local exposures consistent with FFIEC reporting requirements.

<sup>(2)</sup>Exposures have been reduced by \$34.3 billion and \$19.6 billion at December 31, 2009 and 2008 for the cash applied as collateral to derivative assets.

<sup>(3)</sup>Generally, resale agreements are presented based on the domicile of the counterparty, consistent with FFIEC reporting requirements. Cross-border resale agreements where the underlying securities are U.S. Treasury securities, in which case the domicile is the U.S., are excluded from this presentation.

Our total foreign exposure was \$257.7 billion at December 31, 2009, an increase of \$126.6 billion from December 31, 2008. Our foreign exposure remained concentrated in Europe, which accounted for \$170.8 billion, or 66 percent, of total foreign exposure. The European exposure was mostly in Western Europe and was distributed across a variety of industries. Asia Pacific was our second largest foreign exposure at \$47.6 billion, or 18 percent. Latin America accounted for \$19.5 billion, or eight percent, of total foreign exposure. The increases of \$104.3 billion, \$7.9 billion and \$8.1 billion in our foreign exposure in Europe, Asia Pacific and Latin America, respectively, from December 31, 2008 were primarily due to the acquisition of Merrill Lynch. For more information on our Asia Pacific and Latin America exposure, see the discussion of the foreign exposure to selected countries defined as emerging markets below.

As shown in Table 39, at December 31, 2009 and 2008, the United Kingdom had total cross-border exposure of \$60.7 billion and \$13.3 billion, representing 2.73 percent and 0.73 percent of our total assets. The

United Kingdom was the only country where the total cross-border exposure exceeded one percent of our total assets at December 31, 2009. The increase of \$47.4 billion was primarily due to the acquisition of Merrill Lynch. At December 31, 2009, Germany and France, with total cross-border exposure of \$18.9 billion and \$17.4 billion, representing 0.85 percent and 0.78 percent of total assets were the only other countries that had total cross-border exposure which exceeded 0.75 percent of our total assets.

Exposure includes cross-border claims by our foreign offices including loans, acceptances, time deposits placed, trading account assets, securities, derivative assets, other interest-earning investments and other monetary assets. Amounts also include unused commitments, SBLCs, commercial letters of credit and formal guarantees. Sector definitions are consistent with FFIEC reporting requirements for preparing the Country Exposure Report.

**Table 39 Total Cross-border Exposure Exceeding One Percent of Total Assets** <sup>(1)</sup>

	December 31				Cross-border Exposure	Exposure as a Percentage of Total Assets
	2009	Public Sector	Banks	Private Sector		
(Dollars in millions)						
United Kingdom	2009	\$ 157	\$8,478	\$ 52,080	\$ 60,715	2.73%
	2008	543	567	12,167	13,277	0.73

<sup>(1)</sup>At December 31, 2009 and 2008, total cross-border exposure for the United Kingdom included derivatives exposure of \$5.0 billion and \$3.2 billion, which has been reduced by the amount of cash collateral applied of \$7.1 billion and \$4.5 billion. Derivative assets were collateralized by other marketable securities of \$18 million and \$124 million at December 31, 2009 and 2008.

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As presented in Table 40, foreign exposure to borrowers or counterparties in emerging markets increased \$4.7 billion to \$50.6 billion at December 31, 2009, compared to \$45.8 billion at December 31, 2008. The increase was due to the acquisition of Merrill Lynch partially offset by

the sale of CCB common shares in 2009. Foreign exposure to borrowers or counterparties in emerging markets represented 20 percent and 35 percent of total foreign exposure at December 31, 2009 and 2008.

**Table 40 Selected Emerging Markets <sup>(1)</sup>**

(Dollars in millions) Region/Country	Loans and Leases, and Loan Commitments		Other Financing <sup>(2)</sup>	Derivative Assets <sup>(3)</sup>	Securities/ Other Investments <sup>(4)</sup>	Total Cross- border Exposure <sup>(5)</sup>	Local Country Exposure Net of Local Liabilities <sup>(6)</sup>	Total Emerging Market Exposure at December 31, 2009	Increase (Decrease) From December 31, 2008
	<b>Asia Pacific</b>								
China	\$ 572	\$ 517	\$ 704	\$ 10,270	\$ 12,063	\$ —	\$ 12,063	\$ (8,642)	
India	1,702	1,091	639	1,704	5,136	1,024	6,160	1,726	
South Korea	428	803	1,275	2,505	5,011	—	5,011	335	
Hong Kong	391	337	98	276	1,102	—	1,102	421	
Singapore	293	54	228	293	868	—	868	(701)	
Taiwan	279	32	86	127	524	205	729	(113)	
Other Asia Pacific <sup>(7)</sup>	248	63	147	505	963	68	1,031	426	
<b>Total Asia Pacific</b>	<b>3,913</b>	<b>2,897</b>	<b>3,177</b>	<b>15,680</b>	<b>25,667</b>	<b>1,297</b>	<b>26,964</b>	<b>(6,548)</b>	
<b>Latin America</b>									
Brazil	522	475	156	6,396	7,549	1,905	9,454	5,585	
Mexico	1,667	291	524	2,860	5,342	129	5,471	1,314	
Chile	604	248	281	26	1,159	2	1,161	582	
Other Latin America <sup>(7)</sup>	150	319	354	446	1,269	211	1,480	833	
<b>Total Latin America</b>	<b>2,943</b>	<b>1,333</b>	<b>1,315</b>	<b>9,728</b>	<b>15,319</b>	<b>2,247</b>	<b>17,566</b>	<b>8,314</b>	
<b>Middle East and Africa</b>									
South Africa	133	2	93	920	1,148	—	1,148	821	
Bahrain	119	8	36	970	1,133	—	1,133	(56)	
United Arab Emirates	469	12	167	72	720	—	720	310	
Other Middle East and Africa <sup>(7)</sup>	315	92	142	218	767	1	768	239	
<b>Total Middle East and Africa</b>	<b>1,036</b>	<b>114</b>	<b>438</b>	<b>2,180</b>	<b>3,768</b>	<b>1</b>	<b>3,769</b>	<b>1,314</b>	
<b>Central and Eastern Europe</b>									
Russian Federation	116	66	273	214	669	—	669	577	
Other Central and Eastern Europe <sup>(7)</sup>	141	356	289	788	1,574	32	1,606	1,069	
<b>Total Central and Eastern Europe</b>	<b>257</b>	<b>422</b>	<b>562</b>	<b>1,002</b>	<b>2,243</b>	<b>32</b>	<b>2,275</b>	<b>1,646</b>	
<b>Total emerging market exposure</b>	<b>\$ 8,149</b>	<b>\$ 4,766</b>	<b>\$ 5,492</b>	<b>\$ 28,590</b>	<b>\$ 46,997</b>	<b>\$ 3,577</b>	<b>\$ 50,574</b>	<b>\$ 4,726</b>	

<sup>(1)</sup> There is no generally accepted definition of emerging markets. The definition that we use includes all countries in Asia Pacific excluding Japan, Australia and New Zealand; all countries in Latin America excluding Cayman Islands and Bermuda; all countries in Middle East and Africa; and all countries in Central and Eastern Europe. There was no emerging market exposure included in the portfolio accounted for under the fair value option at December 31, 2009 and 2008.

<sup>(2)</sup> Includes acceptances, SBLCs, commercial letters of credit and formal guarantees.

<sup>(3)</sup> Derivative assets are carried at fair value and have been reduced by the amount of cash collateral applied of \$557 million and \$152 million at December 31, 2009 and 2008. At December 31, 2009 and 2008, there were \$616 million and \$531 million of other marketable securities collateralizing derivative assets.

<sup>(4)</sup> Generally, cross-border resale agreements are presented based on the domicile of the counterparty, consistent with FFIEC reporting requirements. Cross-border resale agreements where the underlying securities are U.S. Treasury securities, in which case the domicile is the U.S., are excluded from this presentation.

<sup>(5)</sup> Cross-border exposure includes amounts payable to the Corporation by borrowers or counterparties with a country of residence other than the one in which the credit is booked, regardless of the currency in which the claim is denominated, consistent with FFIEC reporting requirements.

<sup>(6)</sup> Local country exposure includes amounts payable to the Corporation by borrowers with a country of residence in which the credit is booked, regardless of the currency in which the claim is denominated. Local funding or liabilities are subtracted from local exposures consistent with FFIEC reporting requirements. Total amount of available local liabilities funding local country exposure at December 31, 2009 was \$17.6 billion compared to \$12.6 billion at December 31, 2008. Local liabilities at December 31, 2009 in Asia Pacific, Latin America, and Middle East and Africa were \$16.3 billion, \$857 million and \$449 million, respectively, of which \$8.7 billion were in Singapore, \$2.1 billion were in Hong Kong, \$1.5 billion were in both China and India, \$1.3 billion were in South Korea, and \$734 million were in Mexico. There were no other countries with available local liabilities funding local country exposure greater than \$500 million.

<sup>(7)</sup> No country included in Other Asia Pacific, Other Latin America, Other Middle East and Africa, and Other Central and Eastern Europe had total foreign exposure of more than \$500 million.

At December 31, 2009 and 2008, 53 percent and 73 percent of the emerging markets exposure was in Asia Pacific. Emerging markets exposure in Asia Pacific decreased by \$6.5 billion driven by the sale of CCB common shares in 2009. Our exposure in China was primarily related to our equity investment in CCB which accounted for \$9.2 billion and \$19.7 billion at December 31, 2009 and 2008. For more information on our CCB investment, refer to the *All Other* discussion beginning on page 41.

At December 31, 2009, 35 percent of the emerging markets exposure was in Latin America compared to 20 percent at December 31, 2008. Latin America emerging markets exposure increased by \$8.3 billion due to the acquisition of Merrill Lynch. Our exposure in Brazil was primarily related to the carrying value of our investment in Itaú Unibanco, which accounted for \$5.4 billion and \$2.5 billion of exposure in Brazil at December 31, 2009 and 2008. Our equity investment in Itaú Unibanco represents five percent and eight percent of its outstanding voting and non-voting shares at December 31, 2009 and 2008. Our exposure in Mexico was primarily related to our 24.9 percent investment in Santander, which is classified as securities and other investments in Table 40, and accounted for \$2.5 billion and \$2.1 billion of exposure in Mexico at December 31, 2009 and 2008.

At December 31, 2009 and 2008, seven percent and six percent of the emerging markets exposure was in Middle East and Africa, with the increase of \$1.3 billion due to the acquisition of Merrill Lynch.

At December 31, 2009 and 2008, five percent and one percent of the emerging markets exposure was in Central and Eastern Europe which increased by \$1.6 billion due to the acquisition of Merrill Lynch.

## Provision for Credit Losses

The provision for credit losses increased \$21.7 billion to \$48.6 billion for 2009 compared to 2008.

The consumer portion of the provision for credit losses increased \$15.1 billion to \$36.9 billion for 2009 compared to 2008. The increase was driven by higher net charge-offs in our consumer real estate, consumer credit card and consumer lending portfolios, reflecting deterioration in the economy and housing markets. In addition to higher net charge-offs, the provision increase was also driven by higher reserve additions for deterioration in the purchased impaired and residential mortgage portfolios, new draws on previously securitized accounts as well as an approximate \$800 million addition to increase the reserve coverage to approximately 12 months of charge-offs in consumer credit card. These increases were partially offset by lower reserve additions in our unsecured domestic consumer lending portfolios resulting from improved delinquencies and in the home equity portfolio due to the slowdown in the pace of deterioration. In the Countrywide and Merrill Lynch consumer purchased impaired portfolios, the additions to reserves to reflect further reductions in expected principal cash flows were \$3.5 billion in 2009 compared to \$750 million in 2008. The increase was primarily related to the home equity purchased impaired portfolio.

The commercial portion of the provision for credit losses including the provision for unfunded lending commitments increased \$6.7 billion to \$11.7 billion for 2009 compared to 2008. The increase was driven by higher net charge-offs and higher additions to the reserves in the commercial real estate and commercial – domestic portfolios, reflecting deterioration across a broad range of property types, industries and borrowers. These increases were partially offset by lower reserve additions in the small business portfolio due to improved delinquencies.

## Allowance for Credit Losses

The allowance for loan and lease losses excludes loans accounted for under the fair value option as fair value adjustments related to loans measured at fair value include a credit risk component. The allowance for loan and lease losses is allocated based on two components. We evaluate the adequacy of the allowance for loan and lease losses based on the combined total of these two components.

The first component of the allowance for loan and lease losses covers those commercial loans, excluding loans accounted for under the fair value option, that are either nonperforming or impaired, or consumer real estate loans that have been modified in a TDR. These loans are subject to impairment measurement at the loan level based on the present value of expected future cash flows discounted at the loan's contractual effective interest rate (or collateral value or observable market price). When the values are lower than the carrying value of that loan, impairment is recognized. For purposes of computing this specific loss component of the allowance, larger impaired loans are evaluated individually and smaller impaired loans are evaluated as a pool using historical loss experience for the respective product types and risk ratings of the loans.

The second component of the allowance for loan and lease losses covers performing consumer and commercial loans and leases excluding loans accounted for under the fair value option. The allowance for commercial loan and lease losses is established by product type after analyzing historical loss experience by internal risk rating, current economic conditions, industry performance trends, geographic or obligor concentrations within each portfolio segment, and any other pertinent information. The commercial historical loss experience is updated quarterly to incorporate the most recent data reflective of the current economic environment. As of December 31, 2009, quarterly updates to historical loss experience resulted in an increase in the allowance for loan and lease losses most significantly in the commercial real estate portfolio. The allowance for consumer and certain homogeneous commercial loan and lease products is based on aggregated portfolio segment evaluations, generally by product type. Loss forecast models are utilized that consider a variety of factors including, but not limited to, historical loss experience, estimated defaults or foreclosures based on portfolio trends, delinquencies, economic trends and credit scores. These loss forecast models are updated on a quarterly basis to incorporate information reflecting the current economic environment. As of December 31, 2009, quarterly updates to the loss forecast models resulted in increases in the allowance for loan and lease losses in the consumer real estate and foreign credit card portfolios and reductions in the allowance for the *Global Card Services* consumer lending and domestic credit card portfolios.

We monitor differences between estimated and actual incurred loan and lease losses. This monitoring process includes periodic assessments by senior management of loan and lease portfolios and the models used to estimate incurred losses in those portfolios.

Additions to the allowance for loan and lease losses are made by charges to the provision for credit losses. Credit exposures deemed to be uncollectible are charged against the allowance for loan and lease losses. Recoveries of previously charged off amounts are credited to the allowance for loan and lease losses.

The allowance for loan and lease losses for the consumer portfolio as presented in Table 42 was \$27.8 billion at December 31, 2009, an increase of \$11.1 billion from December 31, 2008. This increase was primarily related to the impact of the weak economy and deterioration in



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the housing markets, which drove reserve builds for higher losses across most consumer portfolios. With respect to the Countrywide and Merrill Lynch consumer purchased impaired portfolios, updating of our expected principal cash flows resulted in an increase in reserves of \$3.5 billion in the home equity, discontinued real estate, and residential mortgage portfolios.

The allowance for commercial loan and lease losses was \$9.4 billion at December 31, 2009, a \$3.0 billion increase from December 31, 2008. The increase in allowance levels was driven by reserve increases on the commercial real estate and commercial – domestic portfolios within *Global Banking*.

The allowance for loan and lease losses as a percentage of total loans and leases outstanding was 4.16 percent at December 31, 2009, compared to 2.49 percent at December 31, 2008. The increase in the ratio was primarily driven by consumer reserve increases for higher losses in the residential mortgage, consumer card and home equity portfolios, reflecting deterioration in the housing markets and the impact of the weak economy. The increase was also the result of reserve increases in the commercial real estate and commercial – domestic portfolios reflecting broad-based deterioration across various borrowers, industries, and property types. In addition, the December 31, 2009 and 2008 ratios include the impact of the purchased impaired portfolio. Excluding the impacts of the purchased impaired portfolio, the allowance for loan and lease losses as a percentage of total loans and leases outstanding was 3.88 percent at December 31, 2009, compared to 2.53 percent at December 31, 2008.

### **Reserve for Unfunded Lending Commitments**

In addition to the allowance for loan and lease losses, we also estimate probable losses related to unfunded lending commitments excluding commitments accounted for under the fair value option, such as letters of credit and financial guarantees, and binding unfunded loan commitments. Unfunded lending commitments are subject to the same assessment as funded loans, except utilization assumptions are considered. The reserve for unfunded lending commitments is included in accrued expenses and other liabilities on the Consolidated Balance Sheet with changes to the reserve generally made through the provision for credit losses.

The reserve for unfunded lending commitments at December 31, 2009 was \$1.5 billion compared to \$421 million at December 31, 2008. The increase was largely driven by the fair value of the acquired Merrill Lynch unfunded lending commitments.

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Table 41 presents a rollforward of the allowance for credit losses for 2009 and 2008.

**Table 41 Allowance for Credit Losses**

(Dollars in millions)	2009	2008
<b>Allowance for loan and lease losses, January 1</b>	<b>\$ 23,071</b>	<b>\$ 11,588</b>
<b>Loans and leases charged off</b>		
Residential mortgage	(4,436)	(964)
Home equity	(7,205)	(3,597)
Discontinued real estate	(104)	(19)
Credit card – domestic	(6,753)	(4,469)
Credit card – foreign	(1,332)	(639)
Direct/Indirect consumer	(6,406)	(3,777)
Other consumer	(491)	(461)
<b>Total consumer charge-offs</b>	<b>(26,727)</b>	<b>(13,926)</b>
Commercial – domestic <sup>(1)</sup>	(5,237)	(2,567)
Commercial real estate	(2,744)	(895)
Commercial lease financing	(217)	(79)
Commercial – foreign	(558)	(199)
<b>Total commercial charge-offs</b>	<b>(8,756)</b>	<b>(3,740)</b>
<b>Total loans and leases charged off</b>	<b>(35,483)</b>	<b>(17,666)</b>
<b>Recoveries of loans and leases previously charged off</b>		
Residential mortgage	86	39
Home equity	155	101
Discontinued real estate	3	3
Credit card – domestic	206	308
Credit card – foreign	93	88
Direct/Indirect consumer	943	663
Other consumer	63	62
<b>Total consumer recoveries</b>	<b>1,549</b>	<b>1,264</b>
Commercial – domestic <sup>(2)</sup>	161	118
Commercial real estate	42	8
Commercial lease financing	22	19
Commercial – foreign	21	26
<b>Total commercial recoveries</b>	<b>246</b>	<b>171</b>
<b>Total recoveries of loans and leases previously charged off</b>	<b>1,795</b>	<b>1,435</b>
<b>Net charge-offs</b>	<b>(33,688)</b>	<b>(16,231)</b>
Provision for loan and lease losses	48,366	26,922
Write-downs on consumer purchased impaired loans <sup>(3)</sup>	(179)	n/a
Other <sup>(4)</sup>	(370)	792
<b>Allowance for loan and lease losses, December 31</b>	<b>37,200</b>	<b>23,071</b>
<b>Reserve for unfunded lending commitments, January 1</b>	<b>421</b>	<b>518</b>
Provision for unfunded lending commitments	204	(97)
Other <sup>(5)</sup>	862	–
<b>Reserve for unfunded lending commitments, December 31</b>	<b>1,487</b>	<b>421</b>
<b>Allowance for credit losses, December 31</b>	<b>\$ 38,687</b>	<b>\$ 23,492</b>
Loans and leases outstanding at December 31 <sup>(6)</sup>	<b>\$895,192</b>	<b>\$926,033</b>
Allowance for loan and lease losses as a percentage of total loans and leases outstanding at December 31 <sup>(3, 6)</sup>	<b>4.16%</b>	<b>2.49%</b>
Consumer allowance for loan and lease losses as a percentage of total consumer loans and leases outstanding at December 31 <sup>(3)</sup>	<b>4.81</b>	<b>2.83</b>
Commercial allowance for loan and lease losses as a percentage of total commercial loans and leases outstanding at December 31 <sup>(3)</sup>	<b>2.96</b>	<b>1.90</b>
Average loans and leases outstanding <sup>(3, 6)</sup>	<b>\$941,862</b>	<b>\$905,944</b>
Net charge-offs as a percentage of average loans and leases outstanding <sup>(3, 6)</sup>	<b>3.58%</b>	<b>1.79%</b>
Allowance for loan and lease losses as a percentage of total nonperforming loans and leases at December 31 <sup>(3, 6)</sup>	<b>111</b>	<b>141</b>
Ratio of the allowance for loan and lease losses at December 31 to net charge-offs <sup>(3)</sup>	<b>1.10</b>	<b>1.42</b>

<sup>(1)</sup>Includes small business commercial – domestic charge-offs of \$3.0 billion and \$2.0 billion in 2009 and 2008.

<sup>(2)</sup>Includes small business commercial – domestic recoveries of \$65 million and \$39 million in 2009 and 2008.

<sup>(3)</sup>Allowance for loan and lease losses includes \$3.9 billion and \$750 million of valuation allowance for consumer purchased impaired loans at December 31, 2009 and 2008. Excluding the valuation allowance for purchased impaired loans, allowance for loan and lease losses as a percentage of total nonperforming loans and leases would have been 99 percent and 136 percent at December 31, 2009 and 2008. For more information on the impact of purchased impaired loans on asset quality, see Consumer Portfolio Credit Risk Management beginning on page 54 and Commercial Portfolio Credit Risk Management beginning on page 64.

<sup>(4)</sup>The 2009 amount includes a \$750 million reduction in the allowance for loan and lease losses related to credit card loans of \$8.5 billion which were exchanged for a \$7.8 billion held-to-maturity debt security that was issued by the Corporation's U.S. Credit Card Securitization Trust and retained by the Corporation. This reduction was partially offset by a \$340 million increase associated with the reclassification to other assets of the December 31, 2008 amount expected to be reimbursed under residential mortgage cash collateralized synthetic securitizations. The 2008 amount includes the \$1.2 billion addition of the Countrywide allowance for loan losses as of July 1, 2008.

<sup>(5)</sup>The 2009 amount represents the fair value of the acquired Merrill Lynch unfunded lending commitments excluding those accounted for under the fair value option, net of accretion and the impact of funding previously unfunded portions.

<sup>(6)</sup>Outstanding loan and lease balances and ratios do not include loans accounted for under the fair value option. Loans measured at fair value were \$4.9 billion and \$5.4 billion at December 31, 2009 and 2008. Average loans measured at fair value were \$6.9 billion and \$4.9 billion for 2009 and 2008.

n/a= not applicable

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For reporting purposes, we allocate the allowance for credit losses across products. However, the allowance is available to absorb any credit losses without restriction. Table 42 presents our allocation by product type.

**Table 42 Allocation of the Allowance for Credit Losses by Product Type**

	December 31					
	2009		Percent of Loans and Leases Outstanding <sup>(1)</sup>	2008		Percent of Loans and Leases Outstanding <sup>(1)</sup>
(Dollars in millions)	Amount	Percent of Total		Amount	Percent of Total	
<b>Allowance for loan and lease losses</b>						
Residential mortgage	\$ 4,607	12.38%	1.90%	\$ 1,382	5.99%	0.56%
Home equity	10,160	27.31	6.81	5,385	23.34	3.53
Discontinued real estate	989	2.66	6.66	658	2.85	3.29
Credit card – domestic	6,017	16.18	12.17	3,947	17.11	6.16
Credit card – foreign	1,581	4.25	7.30	742	3.22	4.33
Direct/Indirect consumer	4,227	11.36	4.35	4,341	18.81	5.20
Other consumer	204	0.55	6.53	203	0.88	5.87
Total consumer	27,785	74.69	4.81	16,658	72.20	2.83
Commercial – domestic <sup>(2)</sup>	5,152	13.85	2.59	4,339	18.81	1.98
Commercial real estate	3,567	9.59	5.14	1,465	6.35	2.26
Commercial lease financing	291	0.78	1.31	223	0.97	1.00
Commercial – foreign	405	1.09	1.50	386	1.67	1.25
Total commercial <sup>(3)</sup>	9,415	25.31	2.96	6,413	27.80	1.90
<b>Allowance for loan and lease losses</b>	<b>37,200</b>	<b>100.00%</b>	<b>4.16%</b>	<b>23,071</b>	<b>100.00%</b>	<b>2.49%</b>
<b>Reserve for unfunded lending commitments <sup>(4)</sup></b>	<b>1,487</b>			<b>421</b>		
<b>Allowance for credit losses <sup>(5)</sup></b>	<b>\$ 38,687</b>			<b>\$ 23,492</b>		

<sup>(1)</sup>Ratios are calculated as allowance for loan and lease losses as a percentage of loans and leases outstanding excluding loans accounted for under the fair value option for each loan and lease category. Loans accounted for under the fair value option include commercial – domestic loans of \$3.0 billion and \$3.5 billion, commercial – foreign loans of \$1.9 billion and \$1.7 billion, and commercial real estate loans of \$90 million and \$203 million at December 31, 2009 and 2008.

<sup>(2)</sup>Includes allowance for small business commercial – domestic loans of \$2.4 billion at both December 31, 2009 and 2008.

<sup>(3)</sup>Includes allowance for loan and lease losses for impaired commercial loans of \$1.2 billion and \$691 million at December 31, 2009 and 2008.

<sup>(4)</sup>The majority of the increase from December 31, 2008 relates to the fair value of the acquired Merrill Lynch unfunded lending commitments, excluding commitments accounted for under the fair value option.

<sup>(5)</sup>Includes \$3.9 billion and \$750 million related to purchased impaired loans at December 31, 2009 and 2008.

## Market Risk Management

Market risk is the risk that values of assets and liabilities or revenues will be adversely affected by changes in market conditions such as market movements. This risk is inherent in the financial instruments associated with our operations and/or activities including loans, deposits, securities, short-term borrowings, long-term debt, trading account assets and liabilities, and derivatives. Market-sensitive assets and liabilities are generated through loans and deposits associated with our traditional banking business, customer and other trading operations, ALM process, credit risk mitigation activities and mortgage banking activities. In the event of market volatility, factors such as underlying market movements and liquidity have an impact on the results of the Corporation.

Our traditional banking loan and deposit products are nontrading positions and are generally reported at amortized cost for assets or the amount owed for liabilities (historical cost). However, these positions are still subject to changes in economic value based on varying market conditions, primarily changes in the levels of interest rates. The risk of adverse changes in the economic value of our nontrading positions is managed through our ALM activities. We have elected to account for certain assets and liabilities under the fair value option. For further information on the fair value of certain financial assets and liabilities, see *Note 20 – Fair Value Measurements* to the Consolidated Financial Statements.

Our trading positions are reported at fair value with changes currently reflected in income. Trading positions are subject to various risk factors, which include exposures to interest rates and foreign exchange rates, as

well as mortgage, equity, commodity, issuer and market liquidity risk factors. We seek to mitigate these risk exposures by using techniques that encompass a variety of financial instruments in both the cash and derivatives markets. The following discusses the key risk components along with respective risk mitigation techniques.

### Interest Rate Risk

Interest rate risk represents exposures to instruments whose values vary with the level or volatility of interest rates. These instruments include, but are not limited to, loans, debt securities, certain trading-related assets and liabilities, deposits, borrowings and derivative instruments. Hedging instruments used to mitigate these risks include related derivatives such as options, futures, forwards and swaps.

### Foreign Exchange Risk

Foreign exchange risk represents exposures to changes in the values of current holdings and future cash flows denominated in other currencies. The types of instruments exposed to this risk include investments in foreign subsidiaries, foreign currency-denominated loans and securities, future cash flows in foreign currencies arising from foreign exchange transactions, foreign currency-denominated debt and various foreign exchange derivative instruments whose values fluctuate with changes in the level or volatility of currency exchange rates or foreign interest rates. Hedging instruments used to mitigate this risk include foreign exchange options, currency swaps, futures, forwards, foreign currency-denominated debt and deposits.

### **Mortgage Risk**

Mortgage risk represents exposures to changes in the value of mortgage-related instruments. The values of these instruments are sensitive to prepayment rates, mortgage rates, agency debt ratings, default, market liquidity, other interest rates and interest rate volatility. Our exposure to these instruments takes several forms. First, we trade and engage in market-making activities in a variety of mortgage securities including whole loans, pass-through certificates, commercial mortgages, and CMOs including CDOs using mortgages as underlying collateral. Second, we originate a variety of MBS which involves the accumulation of mortgage-related loans in anticipation of eventual securitization. Third, we may hold positions in mortgage securities and residential mortgage loans as part of the ALM portfolio. Fourth, we create MSRs as part of our mortgage origination activities. See *Note 1 – Summary of Significant Accounting Principles* and *Note 22 – Mortgage Servicing Rights* to the Consolidated Financial Statements for additional information on MSRs. Hedging instruments used to mitigate this risk include options, futures, forwards, swaps, swaptions and securities.

### **Equity Market Risk**

Equity market risk represents exposures to securities that represent an ownership interest in a corporation in the form of domestic and foreign common stock or other equity-linked instruments. Instruments that would lead to this exposure include, but are not limited to, the following: common stock, exchange traded funds, American Depositary Receipts, convertible bonds, listed equity options (puts and calls), over-the-counter equity options, equity total return swaps, equity index futures and other equity derivative products. Hedging instruments used to mitigate this risk include options, futures, swaps, convertible bonds and cash positions.

### **Commodity Risk**

Commodity risk represents exposures to instruments traded in the petroleum, natural gas, power and metals markets. These instruments consist primarily of futures, forwards, swaps and options. Hedging instruments used to mitigate this risk include options, futures and swaps in the same or similar commodity product, as well as cash positions.

### **Issuer Credit Risk**

Issuer credit risk represents exposures to changes in the creditworthiness of individual issuers or groups of issuers. Our portfolio is exposed to issuer credit risk where the value of an asset may be adversely impacted by changes in the levels of credit spreads, by credit migration, or by defaults. Hedging instruments used to mitigate this risk include bonds, CDS and other credit fixed income instruments.

### **Market Liquidity Risk**

Market liquidity risk represents the risk that expected market activity changes dramatically and, in certain cases, may even cease to exist. This exposes us to the risk that we will not be able to transact in an orderly manner and may impact our results. This impact could further be exacerbated if expected hedging or pricing correlations are impacted by the disproportionate demand or lack of demand for certain instruments. We utilize various risk mitigating techniques as discussed in more detail in Trading Risk Management.

### **Trading Risk Management**

Trading-related revenues represent the amount earned from trading positions, including market-based net interest income, which are taken in a diverse range of financial instruments and markets. Trading account assets and liabilities and derivative positions are reported at fair value. For more information on fair value, see *Note 20 – Fair Value Measurements* to the Consolidated Financial Statements. Trading-related revenues can be volatile and are largely driven by general market conditions and customer demand. Trading-related revenues are dependent on the volume and type of transactions, the level of risk assumed, and the volatility of price and rate movements at any given time within the ever-changing market environment.

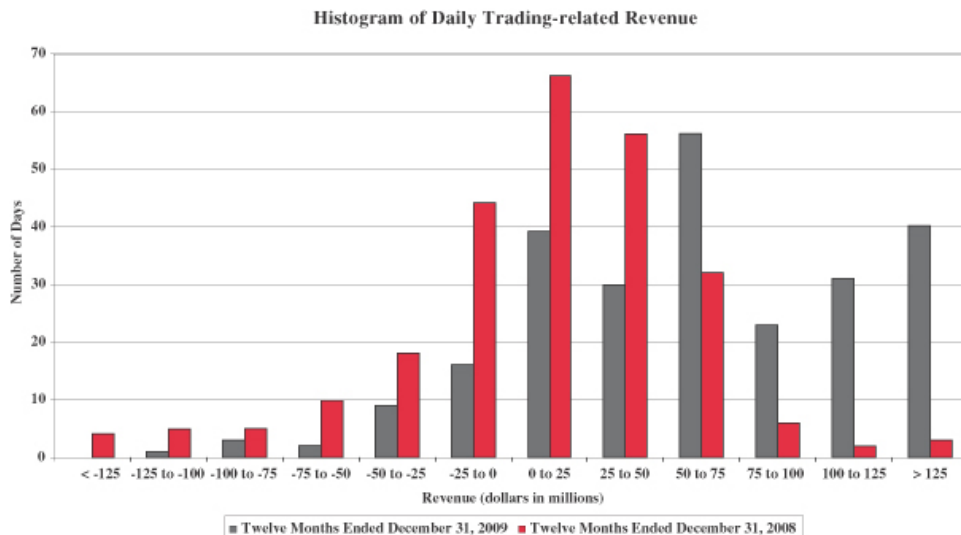
The Global Markets Risk Committee (GRC), chaired by the Global Markets Risk Executive, has been designated by ALMRC as the primary governance authority for Global Markets Risk Management including trading risk management. The GRC's focus is to take a forward-looking view of the primary credit and market risks impacting *Global Markets* and prioritize those that need a proactive risk mitigation strategy. Market risks that impact lines of business outside of *Global Markets* are monitored and governed by their respective governance authorities.

At the GRC meetings, the committee considers significant daily revenues and losses by business along with an explanation of the primary driver of the revenue or loss. Thresholds are established for each of our businesses in order to determine if the revenue or loss is considered to be significant for that business. If any of the thresholds are exceeded, an explanation of the variance is made to the GRC. The thresholds are developed in coordination with the respective risk managers to highlight those revenues or losses which exceed what is considered to be normal daily income statement volatility.

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The following histogram is a graphic depiction of trading volatility and illustrates the daily level of trading-related revenue for the twelve months ended December 31, 2009 as compared with the twelve months ended December 31, 2008. During the twelve months ended December 31, 2009, positive trading-related revenue was recorded for 88 percent of the trading days of which 72 percent were daily trading gains of over \$25 million, six percent of the trading days had losses greater than \$25 million

and the largest loss was \$100 million. This can be compared to the twelve months ended December 31, 2008, where positive trading-related revenue was recorded for 66 percent of the trading days of which 39 percent were daily trading gains of over \$25 million, 17 percent of the trading days had losses greater than \$25 million and the largest loss was \$173 million. The increase in daily trading gains of over \$25 million in 2009 compared to 2008 was driven by more favorable market conditions.



To evaluate risk in our trading activities, we focus on the actual and potential volatility of individual positions as well as portfolios. VAR is a key statistic used to measure market risk. In order to manage day-to-day risks, VAR is subject to trading limits both for our overall trading portfolio and within individual businesses. All limit excesses are communicated to management for review.

A VAR model simulates the value of a portfolio under a range of hypothetical scenarios in order to generate a distribution of potential gains and losses. VAR represents the worst loss the portfolio is expected to experience based on historical trends with a given level of confidence and depends on the volatility of the positions in the portfolio and on how strongly their risks are correlated. Within any VAR model, there are significant and numerous assumptions that will differ from company to company. In addition, the accuracy of a VAR model depends on the availability and quality of historical data for each of the positions in the portfolio. A VAR model may require additional modeling assumptions for new products which do not have extensive historical price data or for illiquid positions for which accurate daily prices are not consistently available.

A VAR model is an effective tool in estimating ranges of potential gains and losses on our trading portfolios. There are however many limitations inherent in a VAR model as it utilizes historical results over a

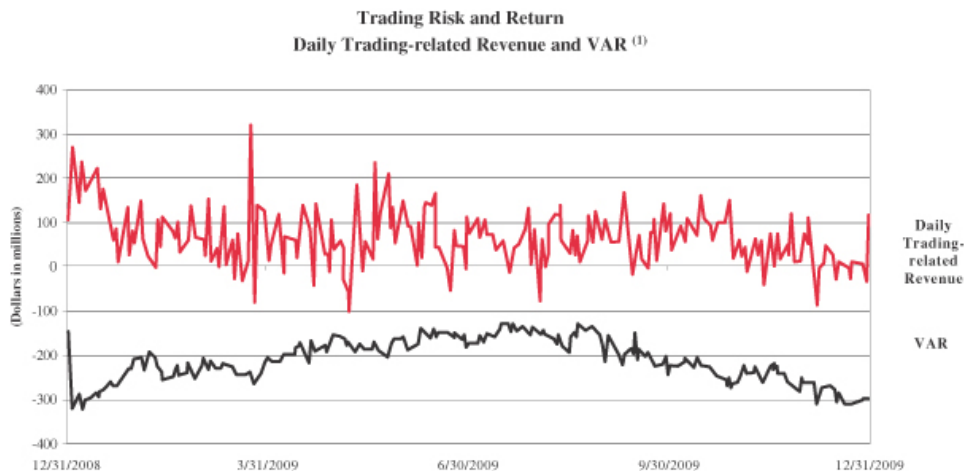
defined time period to estimate future performance. Historical results may not always be indicative of future results and changes in market conditions or in the composition of the underlying portfolio could have a material impact on the accuracy of the VAR model. To ensure that the VAR model reflects current market conditions, we update the historical data underlying our VAR model on a bi-weekly basis and regularly review the assumptions underlying the model.

We continually review, evaluate and enhance our VAR model to ensure that it reflects the material risks in our trading portfolio. Nevertheless, due to the limitations mentioned above, we have historically used the VAR model as only one of the components in managing our trading risk and also use other techniques such as stress testing and desk level limits. Periods of extreme market stress influence the reliability of these techniques to various degrees.

The accuracy of the VAR methodology is reviewed by backtesting (i.e., comparing actual results against expectations derived from historical data) the VAR results against the daily profit and loss. Graphic representation of the backtesting results with additional explanation of backtesting excesses are reported to the GRC. Backtesting excesses occur when trading losses exceed VAR. Senior management reviews and evaluates the results of these tests.

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The following graph shows daily trading-related revenue and VAR for the twelve months ended December 31, 2009. Actual losses did not exceed daily trading VAR in the twelve months ended December 31, 2009. Actual losses exceeded daily trading VAR two times in the twelve months ended December 31, 2008.



<sup>(1)</sup> Our VAR model uses a historical simulation approach based on three years of historical data and an expected shortfall methodology equivalent to a 99 percent confidence level. Statistically, this means that losses will exceed VAR, on average, one out of 100 trading days, or two to three times each year.

Table 43 presents average, high and low daily trading VAR for 2009 and 2008.

**Table 43 Trading Activities Market Risk VAR**

	2009			2008		
	VAR			VAR		
(Dollars in millions)	Average	High <sup>(1)</sup>	Low <sup>(1)</sup>	Average	High <sup>(1)</sup>	Low <sup>(1)</sup>
Foreign exchange	\$ 20.3	\$ 55.4	\$ 6.1	\$ 7.7	\$ 11.7	\$ 5.0
Interest rate	73.7	136.7	43.6	28.9	68.3	12.4
Credit	183.3	338.7	123.9	84.6	185.2	44.1
Real estate/mortgage	51.1	81.3	32.4	22.7	43.1	12.8
Equities	44.6	87.6	23.6	28.0	63.9	15.5
Commodities	20.2	29.1	16.0	8.2	17.7	2.4
Portfolio diversification	(187.0)	—	—	(69.4)	—	—
<b>Total market-based trading portfolio <sup>(2)</sup></b>	<b>\$ 206.2</b>	<b>\$ 325.2</b>	<b>\$ 117.9</b>	<b>\$ 110.7</b>	<b>\$ 255.7</b>	<b>\$ 64.1</b>

<sup>(1)</sup>The high and low for the total portfolio may not equal the sum of the individual components as the highs or lows of the individual portfolios may have occurred on different trading days.

<sup>(2)</sup>The table above does not include credit protection purchased to manage our counterparty credit risk.

The increase in average VAR during 2009 as compared to 2008 resulted from the acquisition of Merrill Lynch. In periods of market stress, the GRC members communicate daily to discuss losses and VAR limit excesses. As a result of this process, the lines of business may selectively reduce risk. Where economically feasible, positions are sold or macroeconomic hedges are executed to reduce the exposure.

Counterparty credit risk is an adjustment to the mark-to-market value of our derivative exposures reflecting the impact of the credit quality of counterparties on our derivative assets. Since counterparty credit exposure is not included in the VAR component of the regulatory capital allocation, we do not include it in our trading VAR, and it is therefore not included in the daily trading-related revenue illustrated in our histogram or used for backtesting.

**Trading Portfolio Stress Testing**

Because the very nature of a VAR model suggests results can exceed our estimates, we also “stress test” our portfolio. Stress testing estimates the value change in our trading portfolio that may result from abnormal market movements. Various scenarios, categorized as either historical or hypothetical, are regularly run and reported for the overall trading portfolio and individual businesses. Historical scenarios simulate the impact of price changes which occurred during a set of extended historical market events. Generally, a 10-business-day window or longer, representing the most severe point during the crisis, is selected for each historical scenario. Hypothetical scenarios provide simulations of anticipated shocks from predefined market stress events. These stress events include shocks to underlying market risk variables which may be well beyond the shocks found in the historical data used to calculate the VAR. As with the histor - -

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ical scenarios, the hypothetical scenarios are designed to represent a short-term market disruption. Scenarios are reviewed and updated as necessary in light of changing positions and new economic or political information. In addition to the value afforded by the results themselves, this information provides senior management with a clear picture of the trend of risk being taken given the relatively static nature of the shocks applied. Stress testing for the trading portfolio is also integrated with the enterprise-wide stress testing. A process has been established to ensure consistency between the scenarios used for the trading portfolio and those used for enterprise-wide stress testing. The scenarios used for enterprise-wide stress testing purposes differ from the typical trading portfolio scenarios in that they have a longer time horizon and the results are forecasted over multiple periods for use in consolidated capital and liquidity planning. For additional information on enterprise-wide stress testing, see page 50.

### Interest Rate Risk Management for Nontrading Activities

Interest rate risk represents the most significant market risk exposure to our nontrading exposures. Our overall goal is to manage interest rate risk so that movements in interest rates do not adversely affect core net interest income – managed basis. Interest rate risk is measured as the potential volatility in our core net interest income – managed basis caused by changes in market interest rates. Client-facing activities, primarily lending and deposit-taking, create interest rate sensitive positions on our balance sheet. Interest rate risk from these activities, as well as the impact of changing market conditions, is managed through our ALM activities.

Simulations are used to estimate the impact on core net interest income – managed basis using numerous interest rate scenarios, balance sheet trends and strategies. These simulations evaluate how these scenarios impact core net interest income – managed basis on short-term financial instruments, debt securities, loans, deposits, borrowings and derivative instruments. In addition, these simulations incorporate assumptions about balance sheet dynamics such as loan and deposit growth and pricing, changes in funding mix, and asset and liability repricing and maturity characteristics. These simulations do not include the impact of hedge ineffectiveness.

Management analyzes core net interest income – managed basis forecasts utilizing different rate scenarios with the baseline utilizing the forward interest rates. Management frequently updates the core net interest income – managed basis forecast for changing assumptions and differing outlooks based on economic trends and market conditions. Thus, we continually monitor our balance sheet position in an effort to maintain an acceptable level of exposure to interest rate changes.

We prepare forward-looking forecasts of core net interest income – managed basis. These baseline forecasts take into consideration expected future business growth, ALM positioning, and the direction of interest rate movements as implied by forward interest rates. We then measure and evaluate the impact that alternative interest rate scenarios have on these static baseline forecasts in order to assess interest rate sensitivity under varied conditions. The spot and 12-month forward monthly rates used in our respective baseline forecasts at December 31, 2009 and 2008 are presented in the following table.

**Table 44 Forward Rates**

	December 31					
	2009			2008		
	Federal Funds	Three-Month LIBOR	10-Year Swap	Federal Funds	Three-Month LIBOR	10-Year Swap
Spot rates	0.25%	0.25%	3.97%	0.25%	1.43%	2.56%
12-month forward rates	1.14	1.53	4.47	0.75	1.41	2.80

During 2009, the spread between the spot three-month London InterBank Offered Rate (LIBOR) and the Federal Funds target rate converged. We are typically asset sensitive to Federal Funds and Prime rates, and liability sensitive to LIBOR. Net interest income benefits as the spread between Federal Funds and LIBOR narrows.

Table 45 below reflects the pre-tax dollar impact to forecasted core net interest income – managed basis over the next twelve months from

December 31, 2009 and 2008, resulting from a 100 bp gradual parallel increase, a 100 bp gradual parallel decrease, a 100 bp gradual curve flattening (increase in short-term rates or decrease in long-term rates) and a 100 bp gradual curve steepening (decrease in short-term rates or increase in long-term rates) from the forward market curve. For further discussion of core net interest income – managed basis see page 27.

**Table 45 Estimated Core Net Interest Income – Managed Basis at Risk**

(Dollars in millions)

	Short Rate (bps)	Long Rate (bps)	December 31	
			2009	2008
Curve Change				
+100 bps Parallel shift	+100	+100	\$ 598	\$ 144
-100 bps Parallel shift	-100	-100	(1,084)	(186)
Flatteners				
Short end	+100	–	127	(545)
Long end	–	-100	(616)	(638)
Steeperers				
Short end	-100	–	(444)	453
Long end	–	+100	476	698

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The sensitivity analysis above assumes that we take no action in response to these rate shifts over the indicated periods. The estimated exposure is reported on a managed basis and reflects impacts that may be realized primarily in net interest income and card income on the Consolidated Statement of Income. This sensitivity analysis excludes any impact that could occur in the valuation of retained interests in the Corporation's securitizations due to changes in interest rate levels. For additional information on securitizations, see *Note 8 – Securitizations* to the Consolidated Financial Statements.

Our core net interest income – managed basis was asset sensitive to a parallel move in interest rates at both December 31, 2009 and 2008. Beyond what is already implied in the forward market curve, the interest rate risk position has become more exposed to declining rates since December 31, 2008 driven by the acquisition of Merrill Lynch and the actions taken to strengthen our capital and liquidity position. As part of our ALM activities, we use securities, residential mortgages, and interest rate and foreign exchange derivatives in managing interest rate sensitivity.

### Securities

The securities portfolio is an integral part of our ALM position and is primarily comprised of debt securities and includes MBS and to a lesser extent corporate, municipal and other investment grade debt securities. At December 31, 2009, AFS debt securities were \$301.6 billion compared to \$276.9 billion at December 31, 2008. During 2009 and 2008, we purchased AFS debt securities of \$185.1 billion and \$184.2 billion, sold \$159.4 billion and \$119.8 billion, and had maturities and received paydowns of \$59.9 billion and \$26.1 billion. We realized \$4.7 billion and \$1.1 billion in gains on sales of debt securities during 2009 and 2008. In addition, we securitized \$14.0 billion and \$26.1 billion of residential mortgage loans into MBS which we retained during 2009 and 2008.

Accumulated OCI includes \$1.5 billion in after-tax gains at December 31, 2009, including \$628 million of net unrealized losses related to AFS debt securities and \$2.1 billion of net unrealized gains related to AFS marketable equity securities. Total market value of the AFS debt securities was \$301.6 billion at December 31, 2009 with a weighted-average duration of 4.5 years and primarily relates to our MBS portfolio.

The amount of pre-tax accumulated OCI loss related to AFS debt securities decreased by \$8.3 billion during 2009 to \$1.0 billion. For those securities that are in an unrealized loss position, we have the intent and ability to hold these securities to recovery and it is more likely than not that we will not be required to sell the securities prior to recovery.

We recognized \$2.8 billion of other-than-temporary impairment losses through earnings on AFS debt securities during 2009 compared to \$3.5 billion during 2008. We also recognized \$326 million of other-than-temporary impairment losses on AFS marketable equity securities during 2009 compared to \$661 million during 2008.

The impairment of AFS debt and marketable equity securities is based on a variety of factors, including the length of time and extent to which the market value has been less than cost; the financial condition of the issuer of the security and its ability to recover market value; and our intent and ability to hold the security to recovery. Based on our evaluation of the above and other relevant factors, and after consideration of the losses described in the paragraph above, we do not believe that the AFS debt and marketable equity securities that are in an unrealized loss position at December 31, 2009 are other-than-temporarily impaired.

We adopted new accounting guidance related to the recognition and presentation of other-than-temporary impairment of debt securities as of January 1, 2009. As prescribed by the new guidance, at December 31, 2009, we recognized the credit component of other-than-temporary

impairment of debt securities in earnings and the non-credit component in OCI for those securities which we do not intend to sell and it is more likely than not that we will not be required to sell the security prior to recovery. For more information on the adoption of the new guidance, see *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements.

### Residential Mortgage Portfolio

At December 31, 2009, residential mortgages were \$242.1 billion compared to \$248.1 billion at December 31, 2008. We retained \$26.6 billion and \$27.3 billion in first mortgages originated by *Home Loans & Insurance* during 2009 and 2008. We securitized \$14.0 billion and \$26.1 billion of residential mortgage loans into MBS which we retained during 2009 and 2008. During 2009, we had no purchases of residential mortgages related to ALM activities compared to purchases of \$405 million during 2008. We sold \$5.9 billion of residential mortgages during 2009 of which \$5.1 billion were originated residential mortgages and \$771 million were previously purchased from third parties. These sales resulted in gains of \$47 million. This compares to sales of \$30.7 billion during 2008 which were comprised of \$22.9 billion in originated residential mortgages and \$7.8 billion in mortgages previously purchased from third parties. These sales resulted in gains of \$496 million. We received paydowns of \$42.3 billion and \$26.3 billion in 2009 and 2008.

In addition to the residential mortgage portfolio, we incorporated the discontinued real estate portfolio that was acquired in connection with the Countrywide acquisition into our ALM activities. This portfolio's balance was \$14.9 billion and \$20.0 billion at December 31, 2009 and 2008.

### Interest Rate and Foreign Exchange Derivative Contracts

Interest rate and foreign exchange derivative contracts are utilized in our ALM activities and serve as an efficient tool to manage our interest rate and foreign exchange risk. We use derivatives to hedge the variability in cash flows or changes in fair value on our balance sheet due to interest rate and foreign exchange components. For additional information on our hedging activities, see *Note 4 – Derivatives* to the Consolidated Financial Statements.

Our interest rate contracts are generally non-leveraged generic interest rate and foreign exchange basis swaps, options, futures and forwards. In addition, we use foreign exchange contracts, including cross-currency interest rate swaps and foreign currency forward contracts, to mitigate the foreign exchange risk associated with foreign currency-denominated assets and liabilities. Table 46 reflects the notional amounts, fair value, weighted-average receive fixed and pay fixed rates, expected maturity and estimated duration of our open ALM derivatives at December 31, 2009 and 2008. These amounts do not include derivative hedges on our net investments in consolidated foreign operations and MSRs.

Changes to the composition of our derivatives portfolio during 2009 reflect actions taken for interest rate and foreign exchange rate risk management. The decisions to reposition our derivatives portfolio are based upon the current assessment of economic and financial conditions including the interest rate environment, balance sheet composition and trends, and the relative mix of our cash and derivative positions. The notional amount of our option positions increased to \$6.5 billion at December 31, 2009 from \$5.0 billion at December 31, 2008. Changes in the levels of the option positions were driven by swaptions acquired as a result of the Merrill Lynch acquisition. Our interest rate swap positions (including foreign exchange contracts) were a net receive fixed position of \$52.2 billion at December 31, 2009 compared to a net receive fixed position of \$50.3 billion at December 31, 2008. Changes in the notional levels of our interest rate swap position were driven by the net addition of



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\$104.4 billion in pay fixed swaps, \$83.4 billion in U.S. dollar-denominated receive fixed swaps and the net addition of \$22.9 billion in foreign currency-denominated receive fixed swaps. The notional amount of our foreign exchange basis swaps was \$122.8 billion and \$54.6 billion at December 31, 2009 and 2008. The \$42.9 billion increase in same-currency basis swap positions was primarily due to the acquisition of Merrill Lynch. Our futures and forwards net notional position, which reflects the net of long and short positions, was a long position of \$10.6 billion compared to a short position of \$8.8 billion at December 31, 2008.

The following table includes derivatives utilized in our ALM activities including those designated as accounting and economic hedging instruments. The fair value of net ALM contracts increased \$5.8 billion to a gain of \$12.3 billion at December 31, 2009 from a gain of \$6.4 billion at December 31, 2008. The increase was primarily attributable to changes in the value of U.S. dollar-denominated receive fixed interest rate swaps of \$1.9 billion, foreign exchange basis swaps of \$1.4 billion, pay fixed interest rate swaps of \$1.2 billion, foreign exchange contracts of \$1.1 billion, option products of \$174 million and same-currency basis swaps of \$107 million. The increase was partially offset by a loss from changes in the value of futures and forward rate contracts of \$66 million.

**Table 46 Asset and Liability Management Interest Rate and Foreign Exchange Contracts**

December 31, 2009

(Dollars in millions, average estimated duration in years)	Fair Value	Expected Maturity							Average Estimated Duration
		Total	2010	2011	2012	2013	2014	Thereafter	
Receive fixed interest rate swaps <sup>(1, 2)</sup>	\$ 4,047								4.34
Notional amount		\$110,597	\$15,212	\$ 8	\$35,454	\$ 7,333	\$ 8,247	\$ 44,343	
Weighted-average fixed-rate		3.65%	1.61%	–%	2.42%	4.06%	3.48%	5.29%	
Pay fixed interest rate swaps <sup>(1)</sup>	1,175								4.18
Notional amount		\$104,445	\$ 2,500	\$50,810	\$14,688	\$ 806	\$ 3,729	\$ 31,912	
Weighted-average fixed-rate		2.83%	1.82%	2.37%	2.24%	3.77%	2.61%	3.92%	
Same-currency basis swaps <sup>(3)</sup>	107								
Notional amount		\$ 42,881	\$ 4,549	\$ 8,593	\$11,934	\$ 5,591	\$ 5,546	\$ 6,668	
Foreign exchange basis swaps <sup>(2, 4, 5)</sup>	4,633								
Notional amount		122,807	7,958	10,968	19,862	18,322	31,853	33,844	
Option products <sup>(6)</sup>	174								
Notional amount		6,540	656	2,031	1,742	244	603	1,264	
Foreign exchange contracts <sup>(2, 5, 7)</sup>	2,144								
Notional amount <sup>(8)</sup>		103,726	63,158	3,491	3,977	6,795	10,585	15,720	
Futures and forward rate contracts	(8)								
Notional amount <sup>(8)</sup>		10,559	10,559	–	–	–	–	–	
<b>Net ALM contracts</b>	<b>\$12,272</b>								

December 31, 2008

(Dollars in millions, average estimated duration in years)	Fair Value	Expected Maturity							Average Estimated Duration
		Total	2009	2010	2011	2012	2013	Thereafter	
Receive fixed interest rate swaps <sup>(1, 2)</sup>	\$ 2,103								4.93
Notional amount		\$ 27,166	\$ 17	\$ 4,002	\$ –	\$ 9,258	\$ 773	\$ 13,116	
Weighted-average fixed-rate		4.08%	7.35%	1.89%	–%	3.31%	4.53%	5.27%	
Foreign exchange basis swaps <sup>(2, 4, 5)</sup>	3,196								
Notional amount		\$ 54,569	\$ 4,578	\$ 6,192	\$ 3,986	\$ 8,916	\$ 4,819	\$ 26,078	
Option products <sup>(6)</sup>	–								
Notional amount		5,025	5,000	22	–	–	–	3	
Foreign exchange contracts <sup>(2, 5, 7)</sup>	1,070								
Notional amount <sup>(8)</sup>		23,063	2,313	4,021	1,116	1,535	486	13,592	
Futures and forward rate contracts	58								
Notional amount <sup>(8)</sup>		(8,793)	(8,793)	–	–	–	–	–	
<b>Net ALM contracts</b>	<b>\$ 6,427</b>								

<sup>(1)</sup>At December 31, 2009, the receive fixed interest rate swap notional that represented forward starting swaps and will not be effective until their respective contractual start dates was \$2.5 billion and the forward starting pay fixed swap positions was \$76.8 billion. At December 31, 2008, there were no forward starting pay or receive fixed swap positions.

<sup>(2)</sup>Does not include basis adjustments on fixed-rate debt issued by the Corporation and hedged under fair value hedges pursuant to derivatives designated as hedging instruments that substantially offset the fair values of these derivatives.

<sup>(3)</sup>At December 31, 2009, same-currency basis swaps consist of \$42.9 billion in both foreign currency and U.S. dollar-denominated basis swaps in which both sides of the swap are in the same currency. There were no same-currency basis swaps at December 31, 2008.

<sup>(4)</sup>Foreign exchange basis swaps consist of cross-currency variable interest rate swaps used separately or in conjunction with receive fixed interest rate swaps.

<sup>(5)</sup>Does not include foreign currency translation adjustments on certain foreign debt issued by the Corporation which substantially offset the fair values of these derivatives.

<sup>(6)</sup>Option products of \$6.5 billion at December 31, 2009 were comprised of \$177 million in purchased caps and \$6.3 billion in swaptions. Option products of \$5.0 billion at December 31, 2008 are comprised completely of purchased caps.

<sup>(7)</sup>Foreign exchange contracts include foreign currency-denominated and cross-currency receive fixed interest rate swaps as well as foreign currency forward rate contracts. Total notional was comprised of \$46.0 billion in foreign currency-denominated and cross-currency receive fixed swaps and \$57.7 billion in foreign currency forward rate contracts at December 31, 2009, and \$23.1 billion in foreign currency-denominated and cross-currency receive fixed swaps and \$78 million in foreign currency forward rate contracts at December 31, 2008.

<sup>(8)</sup>Reflects the net of long and short positions.

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We use interest rate derivative instruments to hedge the variability in the cash flows of our assets and liabilities, and other forecasted transactions (cash flow hedges). From time to time, we also utilize equity-indexed derivatives accounted for as derivatives designated as cash flow hedges to minimize exposure to price fluctuations on the forecasted purchase or sale of certain equity investments. The net losses on both open and terminated derivative instruments recorded in accumulated OCI, net-of-tax, were \$2.5 billion and \$3.5 billion at December 31, 2009 and 2008. These net losses are expected to be reclassified into earnings in the same period when the hedged cash flows affect earnings and will decrease income or increase expense on the respective hedged cash flows. Assuming no change in open cash flow derivative hedge positions and no changes to prices or interest rates beyond what is implied in forward yield curves at December 31, 2009, the pre-tax net losses are expected to be reclassified into earnings as follows: \$937 million, or 23 percent within the next year, 66 percent within five years, and 88 percent within 10 years, with the remaining 12 percent thereafter. For more information on derivatives designated as cash flow hedges, see *Note 4 – Derivatives* to the Consolidated Financial Statements.

In addition to the derivatives disclosed in Table 46 we hedge our net investment in consolidated foreign operations determined to have functional currencies other than the U.S. dollar using forward foreign exchange contracts that typically settle in 90 days, cross currency basis swaps and by issuing foreign currency-denominated debt. We recorded after-tax losses from derivatives and foreign currency-denominated debt in accumulated OCI associated with net investment hedges which was offset by after-tax unrealized gains in accumulated OCI associated for changes in the value of our net investments in consolidated foreign entities at December 31, 2009.

### Mortgage Banking Risk Management

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

Interest rate and market risk can be substantial in the mortgage business. Fluctuations in interest rates drive consumer demand for new mortgages and the level of refinancing activity, which in turn affects total origination and service fee income. Typically, a decline in mortgage interest rates will lead to an increase in mortgage originations and fees and a decrease in the value of the MSR's driven by higher prepayment expectations. Hedging the various sources of interest rate risk in mortgage banking is a complex process that requires complex modeling and ongoing monitoring. IRLCs and the related residential first mortgage LHFS are subject to interest rate risk between the date of the IRLC and the date the loans are sold to the secondary market. To hedge interest rate risk, we utilize forward loan sale commitments and other derivative instruments including purchased options. These instruments are used as economic hedges of IRLCs and residential first mortgage LHFS. At December 31, 2009 and 2008, the notional amount of derivatives economically hedging the IRLCs and residential first mortgage LHFS was \$161.4 billion and \$97.2 billion.

MSR's are nonfinancial assets created when the underlying mortgage loan is sold to investors and we retain the right to service the loan. We use certain derivatives such as interest rate options, interest rate swaps, forward settlement contracts, euro dollar futures, as well as mortgage-backed and U.S. Treasury securities as economic hedges of MSR's. The notional amounts of the derivative contracts and other securities designated as economic hedges of MSR's at December 31, 2009 were \$1.3 trillion and \$67.6 billion, for a total notional amount of \$1.4 trillion. At

December 31, 2008, the notional amounts of the derivative contracts and other securities designated as economic hedges of MSR's were \$1.0 trillion and \$87.5 billion, for a total notional amount of \$1.1 trillion. In 2009, we recorded losses in mortgage banking income of \$3.8 billion related to the change in fair value of these economic hedges as compared to gains of \$8.6 billion for 2008. For additional information on MSR's, see *Note 22 – Mortgage Servicing Rights* to the Consolidated Financial Statements and for more information on mortgage banking income, see the *Home Loans & Insurance* discussion beginning on page 31.

### Compliance Risk Management

Compliance risk is the risk posed by the failure to manage regulatory, legal and ethical issues that could result in monetary damages, losses or harm to our reputation or image. The Seven Elements of a Compliance Program<sup>®</sup> provides the framework for the compliance programs that are consistently applied across the enterprise to manage compliance risk. This framework includes a common approach to commitment and accountability, policies and procedures, controls and supervision, monitoring, regulatory change management, education and awareness and reporting.

We approach compliance risk management on an enterprise and line of business level. The Operational Risk Committee provides oversight of significant compliance risk issues. Within Global Risk Management, Global Compliance Risk Management develops and guides the strategies, policies and practices for assessing and managing compliance risks across the organization. Through education and communication efforts, a culture of compliance is emphasized across the organization. We also mitigate compliance risk through a broad-based approach to process management and improvement.

The lines of business are responsible for all the risks within the business line, including compliance risks. Compliance Risk executives, working in conjunction with senior line of business executives, have developed key tools to address and measure compliance risks and to ensure compliance with laws and regulations in each line of business.

### Operational Risk Management

Operational risk is the risk of loss resulting from inadequate or failed internal processes, people, systems or external events. Successful operational risk management is particularly important to diversified financial services companies because of the nature, volume and complexity of the financial services business. Under the Basel II Rules, an operational loss event is an event that results in loss and is associated with any of the following seven operational loss event categories: internal fraud; external fraud; employment practices and workplace safety; clients, products and business practices; damage to physical assets; business disruption and system failures; and execution, delivery and process management. Losses in these categories are captured and mapped to four overall risk categories: people, process, systems and external events. Specific examples of loss events include robberies, internal fraud, processing errors and physical losses from natural disasters.

We approach operational risk management from two perspectives: the enterprise and line of business. The Operational Risk Committee, which reports to the Audit Committee of the Board, is responsible for operational risk policies, measurement and management, and control processes. Within Global Risk Management, Global Operational Risk Management develops and guides the strategies, policies, practices, controls and monitoring tools for assessing and managing operational risks across the organization.

For selected risks, we use specialized support groups, such as Enterprise Information Management and Supply Chain Management, to

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develop risk management practices, such as an information security program and a supplier program to ensure that suppliers adopt appropriate policies and procedures when performing work on our behalf. These specialized groups also assist the lines of business in the development and implementation of risk management practices specific to the needs of the individual businesses. These groups also work with line of business executives and risk executives to develop and guide appropriate strategies, policies, practices, controls and monitoring tools for each line of business.

Additionally, where appropriate, we purchase insurance policies to mitigate the impact of operational losses when and if they occur. These insurance policies are explicitly incorporated in the structural features of our operational risk evaluation. As insurance recoveries, especially given recent market events, are subject to legal and financial uncertainty, the inclusion of these insurance policies are subject to reductions in the mitigating benefits expected within our operational risk evaluation.

The lines of business are responsible for all the risks within the business line, including operational risks. Operational risk executives, working in conjunction with senior line of business executives, have developed key tools to help identify, measure, mitigate and monitor risk in each line of business. Examples of these include personnel management practices, data reconciliation processes, fraud management units, transaction processing monitoring and analysis, business recovery planning and new product introduction processes. In addition, the lines of business are responsible for monitoring adherence to corporate practices. Line of business management uses a self-assessment process, which helps to identify and evaluate the status of risk and control issues, including mitigation plans, as appropriate. The goal of the self-assessment process is to periodically assess changing market and business conditions, to evaluate key risks impacting each line of business and assess the controls in place to mitigate the risks. In addition to information gathered from the self-assessment process, key operational risk indicators have been developed and are used to help identify trends and issues on both an enterprise and a line of business level.

### ASF Framework

In December 2007, the American Securitization Forum (ASF) issued the Streamlined Foreclosure and Loss Avoidance Framework for Securitized Adjustable Rate Mortgage Loans (the ASF Framework). The ASF Framework was developed to address a large number of subprime loans that are at risk of default when the loans reset from their initial fixed interest rates to variable rates. The objective of the framework is to provide uniform guidelines for evaluating a large number of loans for refinancing in an efficient manner while complying with the relevant tax regulations and off-balance sheet accounting standards for loan securitizations. The ASF Framework targets loans that were originated between January 1, 2005 and July 31, 2007, have an initial fixed interest rate period of 36 months or less and which are scheduled for their first interest rate reset between January 1, 2008 and July 31, 2010.

The ASF Framework categorizes the targeted loans into three segments. Segment 1 includes loans where the borrower is likely to be able to refinance into any available mortgage product. Segment 2 includes loans where the borrower is current but is unlikely to be able to refinance into any readily available mortgage product. Segment 3 includes loans where the borrower is not current. If certain criteria are met, ASF Framework loans in Segment 2 are eligible for fast-track modification under which the interest rate will be kept at the existing initial rate, generally for five years following the interest rate reset date. Upon evaluation, if targeted loans do not meet specific criteria to be eligible for one of the three segments, they are categorized as other loans, as shown in the table below. These criteria include the occupancy status of the borrower, structure and other terms of the loan. In January 2008, the SEC's Office of the Chief Accountant issued a letter addressing the accounting issues relating to the ASF Framework. The letter concluded that the SEC would not object to continuing off-balance sheet accounting treatment for Segment 2 loans modified pursuant to the ASF Framework.

For those current loans that are accounted for off-balance sheet that are modified, but not as part of the ASF Framework, the servicer must perform on an individual basis, an analysis of the borrower and the loan to demonstrate it is probable that the borrower will not meet the repayment obligation in the near term. Such analysis provides sufficient evidence to demonstrate that the loan is in imminent or reasonably foreseeable default. The SEC's Office of the Chief Accountant issued a letter in July 2007 stating that it would not object to continuing off-balance sheet accounting treatment for these loans.

Prior to the acquisition of Countrywide on July 1, 2008, Countrywide began making fast-track loan modifications under Segment 2 of the ASF Framework in June 2008 and the off-balance sheet accounting treatment of QSPEs that hold those loans was not affected. In addition, other workout activities relating to subprime ARMs including modifications (e.g., interest rate reductions and capitalization of interest) and repayment plans were also made. These initiatives have continued subsequent to the acquisition in an effort to work with all of our customers that are eligible and affected by loans that meet the requisite criteria. These foreclosure prevention efforts will reduce foreclosures and the related losses providing a solution for customers and protecting investors.

As of December 31, 2009, the principal balance of beneficial interests issued by the QSPEs that hold subprime ARMs totaled \$70.5 billion and the fair value of beneficial interests related to those QSPEs held by the Corporation totaled \$9 million. The following table presents a summary of loans in QSPEs that hold subprime ARMs as of December 31, 2009 as well as workout and other activity for the subprime loans by ASF categorization for 2009. Prior to the acquisition of Countrywide on July 1, 2008, we did not originate or service significant subprime residential mortgage loans, nor did we hold a significant amount of beneficial interests in QSPEs of subprime residential mortgage loans.

**Table 47 QSPE Loans Subject to ASF Framework Evaluation <sup>(1)</sup>**

	December 31, 2009		Activity During the Year Ended December 31, 2009			
	Balance	Percent of Total	Payoffs	Fast-track Modifications	Other Workout Activities	Foreclosures
(Dollars in millions)						
Segment 1	\$ 4,875	6.9%	\$ 443	\$ —	\$ 675	\$ 78
Segment 2	8,114	11.5	142	27	1,368	155
Segment 3	17,817	25.3	489	6	3,413	3,150
Total subprime ARMs	30,806	43.7	1,074	33	5,456	3,383
Other loans	37,891	53.7	1,228	174	4,355	2,126
Foreclosed properties	1,838	2.6	n/a	n/a	n/a	n/a
<b>Total</b>	<b>\$70,535</b>	<b>100.0%</b>	<b>\$ 2,302</b>	<b>\$ 207</b>	<b>\$ 9,811</b>	<b>\$ 5,509</b>

<sup>(1)</sup> Represents loans that were acquired with the acquisitions of Countrywide on July 1, 2008 and Merrill Lynch on January 1, 2009 that meet the requirements of the ASF Framework.

n/a = not applicable

## Complex Accounting Estimates

Our significant accounting principles, as described in *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements, are essential in understanding the MD&A. Many of our significant accounting principles require complex judgments to estimate the values of assets and liabilities. We have procedures and processes in place to facilitate making these judgments.

The more judgmental estimates are summarized below. We have identified and described the development of the variables most important in the estimation processes that, with the exception of accrued taxes, involve mathematical models to derive the estimates. In many cases, there are numerous alternative judgments that could be used in the process of determining the inputs to the models. Where alternatives exist, we have used the factors that we believe represent the most reasonable value in developing the inputs. Actual performance that differs from our estimates of the key variables could impact net income. Separate from the possible future impact to net income from input and model variables, the value of our lending portfolio and market sensitive assets and liabilities may change subsequent to the balance sheet date, often significantly, due to the nature and magnitude of future credit and market conditions. Such credit and market conditions may change quickly and in unforeseen ways and the resulting volatility could have a significant, negative effect on future operating results. These fluctuations would not be indicative of deficiencies in our models or inputs.

### Allowance for Credit Losses

The allowance for credit losses, which includes the allowance for loan and lease losses and the reserve for unfunded lending commitments, represents management's estimate of probable losses inherent in the Corporation's lending activities excluding those accounted for under the fair value option. Changes to the allowance for credit losses are reported in the Consolidated Statement of Income in the provision for credit losses. Our process for determining the allowance for credit losses is discussed in the Credit Risk Management section beginning on page 54 and *Note 1 – Summary of Significant Accounting Principles* to the Consolidated Financial Statements. Due to the variability in the drivers of the assumptions used in this process, estimates of the portfolio's inherent risks and overall collectability change with changes in the economy, individual industries, countries and borrowers' or counterparties' ability and willingness to repay their obligations. The degree to which any particular assumption affects the allowance for credit losses depends on the severity of the change and its relationship to the other assumptions.

Key judgments used in determining the allowance for credit losses include: (i) risk ratings for pools of commercial loans and leases, (ii) market and collateral values and discount rates for individually evaluated loans, (iii) product type classifications for consumer and commercial loans and leases, (iv) loss rates used for consumer and commercial loans and leases, (v) adjustments made to address current events and conditions, (vi) considerations regarding domestic and global economic uncertainty, and (vii) overall credit conditions.

Our allowance for loan and lease losses is sensitive to the risk ratings assigned to commercial loans and leases. Assuming a downgrade of one level in the internal risk rating for commercial loans and leases, except loans and leases already risk-rated Doubtful as defined by regulatory authorities, the allowance for loan and lease losses would increase by approximately \$4.9 billion at December 31, 2009. The allowance for loan and lease losses as a percentage of total loans and leases at December 31, 2009 was 4.16 percent and this hypothetical increase in the allowance would raise the ratio to approximately 4.70 percent. Our allowance for loan and lease losses is also sensitive to the loss rates used for the consumer and commercial portfolios. A 10 percent increase

in the loss rates used on the consumer and commercial loan and lease portfolios covered by the allowance would increase the allowance for loan and lease losses at December 31, 2009 by approximately \$2.9 billion of which \$2.6 billion would relate to consumer and \$266 million to commercial.

Purchased impaired loans are initially recorded at fair value. Applicable accounting guidance prohibits carry-over or creation of valuation allowances in the initial accounting. However, subsequent decreases in the expected principal cash flows from the date of acquisition result in a charge to the provision for credit losses and a corresponding increase to the allowance for loan and lease losses. Our purchased impaired portfolio is also subjected to stress scenarios to evaluate the potential impact given certain events. A one percent decrease in the expected principal cash flows could result in approximately a \$200 million impairment of the portfolio of which approximately \$100 million would relate to our discontinued real estate portfolio.

These sensitivity analyses do not represent management's expectations of the deterioration in risk ratings or the increases in loss rates but are provided as hypothetical scenarios to assess the sensitivity of the allowance for loan and lease losses to changes in key inputs. We believe the risk ratings and loss severities currently in use are appropriate and that the probability of a downgrade of one level of the internal risk ratings for commercial loans and leases within a short period of time is remote.

The process of determining the level of the allowance for credit losses requires a high degree of judgment. It is possible that others, given the same information, may at any point in time reach different reasonable conclusions.

### Mortgage Servicing Rights

MSRs are nonfinancial assets that are created when a mortgage loan is sold and we retain the right to service the loan. We account for consumer MSRs at fair value with changes in fair value recorded in the Consolidated Statement of Income in mortgage banking income. Commercial-related and residential reverse mortgage MSRs are accounted for using the amortization method (i.e., lower of cost or market) with impairment recognized as a reduction of mortgage banking income. At December 31, 2009, our total MSR balance was \$19.8 billion.

We determine the fair value of our consumer MSRs using a valuation model that calculates the present value of estimated future net servicing income. The model incorporates key economic assumptions including estimates of prepayment rates and resultant weighted average lives of the MSRs, and the option-adjusted spread (OAS) levels. These variables can, and generally do change from quarter to quarter as market conditions and projected interest rates change. These assumptions are subjective in nature and changes in these assumptions could materially affect our net income. For example, decreasing the prepayment rate assumption used in the valuation of our consumer MSRs by 10 percent while keeping all other assumptions unchanged could have resulted in an estimated increase of \$895 million in mortgage banking income at December 31, 2009.

We manage potential changes in the fair value of MSRs through a comprehensive risk management program. The intent is to mitigate the effects of changes in the fair value of MSRs through the use of risk management instruments. To reduce the sensitivity of earnings to interest rate and market value fluctuations, securities as well as certain derivatives such as options and interest rate swaps may be used as economic hedges of the MSRs, but are not designated as accounting hedges. These instruments are carried at fair value with changes in fair value recognized in mortgage banking income. The impact provided above does not reflect any hedge strategies that may be undertaken to mitigate such risk.

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For additional information on MSRs, including the sensitivity of weighted average lives and the fair value of MSRs to changes in modeled assumptions, see *Note 22 – Mortgage Servicing Rights* to the Consolidated Financial Statements.

### **Fair Value of Financial Instruments**

We determine the fair values of financial instruments based on the fair value hierarchy under applicable accounting guidance which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Applicable accounting guidance establishes three levels of inputs used to measure fair value. We carry trading account assets and liabilities, derivative assets and liabilities, AFS debt and marketable equity securities, certain MSRs, and certain other assets at fair value. Also, we account for certain corporate loans and loan commitments, LHFS, commercial paper and other short-term borrowings, securities financing agreements, asset-backed secured financings, long-term deposits, and long-term debt under the fair value option. For more information, see *Note 20 – Fair Value Measurements* to the Consolidated Financial Statements.

The fair values of assets and liabilities include adjustments for market liquidity, credit quality and other deal specific factors, where appropriate. Valuations of products using models or other techniques are sensitive to assumptions used for the significant inputs. Where market data is available, the inputs used for valuation reflect that information as of our valuation date. Inputs to valuation models are considered unobservable if they are supported by little or no market activity. In periods of extreme volatility, lessened liquidity or in illiquid markets, there may be more variability in market pricing or a lack of market data to use in the valuation process. To ensure the prudent application of estimates and management judgment in determining the fair value of assets and liabilities, we have in place various processes and controls that include: a model validation policy that requires review and approval of quantitative models used for deal pricing; financial statement fair value determination and risk quantification; a trading product valuation policy that requires verification of all traded product valuations; and a periodic review and substantiation of daily profit and loss reporting for all traded products. Primarily through validation controls, we utilize both broker and pricing service inputs which can and do include both market-observable and internally-modeled values and/or value inputs. Our reliance on this information is tempered by the knowledge of how the broker and/or pricing service develops its data with a higher degree of reliance applied to those that are more directly observable and lesser reliance applied to those developed through their own internal modeling. Similarly, broker quotes that are executable are given a higher level of reliance than indicative broker quotes, which are not executable. These processes and controls are performed independently of the business.

Trading account assets and liabilities are carried at fair value based primarily on actively traded markets where prices are from either direct market quotes or observed transactions. Liquidity is a significant factor in the determination of the fair value of trading account assets and liabilities. Market price quotes may not be readily available for some positions, or positions within a market sector where trading activity has slowed significantly or ceased. Situations of illiquidity generally are triggered by market perception of credit uncertainty regarding a single company or a specific market sector. In these instances, fair value is determined based on limited available market information and other factors, principally from reviewing the issuer's financial statements and changes in credit ratings made by one or more of the ratings agencies.

Trading account profits (losses), which represent the net amount earned from our trading positions, can be volatile and are largely driven by general market conditions and customer demand. Trading account

profits (losses) are dependent on the volume and type of transactions, the level of risk assumed, and the volatility of price and rate movements at any given time within the ever-changing market environment. To evaluate risk in our trading activities, we focus on the actual and potential volatility of individual positions as well as portfolios. At a portfolio and corporate level, we use trading limits, stress testing and tools such as VAR modeling, which estimates a potential daily loss that we do not expect to exceed with a specified confidence level, to measure and manage market risk. For more information on VAR, see *Trading Risk Management* beginning on page 80.

The fair values of derivative assets and liabilities traded in the over-the-counter market are determined using quantitative models that require the use of multiple market inputs including interest rates, prices, and indices to generate continuous yield or pricing curves and volatility factors, which are used to value the positions. The majority of market inputs are actively quoted and can be validated through external sources including brokers, market transactions and third-party pricing services. Estimation risk is greater for derivative asset and liability positions that are either option-based or have longer maturity dates where observable market inputs are less readily available or are unobservable, in which case quantitative-based extrapolations of rate, price or index scenarios are used in determining fair values. The Corporation incorporates within its fair value measurements of over-the-counter derivatives the net credit differential between the counterparty credit risk and our own credit risk. The value of the credit differential is determined by reference to existing direct market reference costs of credit, or where direct references are not available a proxy is applied consistent with direct references for other counterparties that are similar in credit risk. An estimate of severity of loss is also used in the determination of fair value, primarily based on historical experience adjusted for any more recent name specific expectations.

### **Level 3 Assets and Liabilities**

Financial assets and liabilities whose values are based on prices or valuation techniques that require inputs that are both unobservable and are significant to the overall fair value measurement are classified as Level 3 under the fair value hierarchy established in applicable accounting guidance. The Level 3 financial assets and liabilities include private equity investments, consumer MSRs, ABS, highly structured, complex or long-dated derivative contracts, structured notes and certain CDOs, for which there is not an active market for identical assets from which to determine fair value or where sufficient, current market information about similar assets to use as observable, corroborated data for all significant inputs into a valuation model are not available. In these cases, the fair values of these Level 3 financial assets and liabilities are determined using pricing models, discounted cash flow methodologies, a net asset value approach for certain structured securities, or similar techniques, for which the determination of fair value requires significant management judgment or estimation. In 2009, there were no changes to the quantitative models, or uses of such models, that resulted in a material adjustment to the Consolidated Statement of Income.

Level 3 assets, before the impact of counterparty netting related to our derivative positions, were \$103.6 billion and \$59.4 billion at December 31, 2009 and 2008 and represented approximately 14 percent and 10 percent of assets measured at fair value (or five percent and three percent of total assets). Level 3 liabilities, before the impact of counterparty netting related to our derivative positions, were \$21.8 billion and \$8.0 billion as of December 31, 2009 and 2008 and represented approximately 10 percent and nine percent of the liabilities measured at fair value (or approximately one percent of total liabilities). At December 31, 2009, \$21.1 billion, or 12 percent, of trading account assets were

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classified as Level 3 assets, and \$396 million or less than one percent of trading account liabilities were classified as Level 3 liabilities. At December 31, 2009, \$23.0 billion, or 29 percent, of derivative assets were classified as Level 3 assets, and \$15.2 billion and 35 percent of derivative liabilities were classified as Level 3 liabilities. See *Note 20 – Fair Value Measurements* to the Consolidated Financial Statements for a tabular presentation of the fair values of Level 1, 2 and 3 assets and liabilities at December 31, 2009 and 2008 and detail of Level 3 activity for the years ended December 31, 2009, 2008 and 2007.

In 2009, we recognized gains of \$10.6 billion on Level 3 assets and liabilities which were primarily gains on net derivatives and consumer MSR's partially offset by losses on long-term debt. We also recorded unrealized gains of \$3.3 billion (pre-tax) in accumulated OCI on Level 3 assets and liabilities during the year, which were driven primarily by improved market-observability as liquidity returned to the market related to non-agency MBS. The gains in net derivatives were driven by high origination volumes of held-for-sale mortgage loans and by positive valuation adjustments on our IRLCs. The increase in the consumer MSR balance benefited from changes in the forward interest rate curve. Losses of \$2.3 billion on long-term debt were driven by the impact of market movements and from improved credit spreads on certain Merrill Lynch structured notes.

Level 3 financial instruments, such as our consumer MSR's, may be economically hedged with derivatives not classified as Level 3, therefore, gains or losses associated with Level 3 financial instruments may be offset by gains or losses associated with financial instruments classified in other levels of the fair value hierarchy. The gains and losses recorded in earnings did not have a significant impact on our liquidity or capital resources.

A review of fair value hierarchy classifications is conducted on a quarterly basis. Transfers into or out of Level 3 are made if the significant inputs used in the financial models measuring the fair values of the assets and liabilities became unobservable or observable, respectively, in the current marketplace. These transfers are effective as of the beginning of the quarter. In 2009, several transfers were made into or out of Level 3. Long-term debt of \$4.3 billion was transferred out of Level 3 due to the decreased significance of unobservable inputs on certain structured notes. Net derivative assets of \$5.7 billion were transferred into Level 3 due to the impact of significant unobservable inputs in the overall valuation of certain derivative products in the marketplace.

### Global Principal Investments

Global Principal Investments is included within *Equity Investments in All Other* on page 41. Global Principal Investments is comprised of a diversified portfolio of investments in privately-held and publicly-traded companies at all stages of their life cycle. These investments are made either directly in a company or held through a fund. Some of these companies may need access to additional cash to support their long-term business models. Market conditions and company performance may impact whether funding is available from private investors or the capital markets.

At December 31, 2009, this portfolio totaled \$14.1 billion including \$12.4 billion, of non-public investments. Investments with active market quotes are carried at estimated fair value; however, the majority of our investments do not have publicly available price quotes and, therefore, the fair value is unobservable. Valuation of these investments requires significant management judgment. We initially value these investments at transaction price and adjust valuations when evidence is available to support such adjustments. Such evidence includes transactions in similar instruments, market comparables, completed or pending third-party transactions in the underlying investment or comparable entities, subsequent rounds of financing, recapitalizations and other transactions across the capital structure, and changes in financial ratios or cash flows. Invest - -

ments are carried at estimated fair value with changes recorded in equity investment income in the Consolidated Statement of Income.

### Accrued Income Taxes

Accrued income taxes, reported as a component of accrued expenses and other liabilities on our Consolidated Balance Sheet, represents the net amount of current income taxes we expect to pay to or receive from various taxing jurisdictions attributable to our operations to date. We currently file income tax returns in more than 100 jurisdictions and consider many factors including statutory, judicial and regulatory guidance, in estimating the appropriate accrued income taxes for each jurisdiction.

In applying the applicable accounting guidance, we monitor relevant tax authorities and change our estimate of accrued income taxes due to changes in income tax laws and their interpretation by the courts and regulatory authorities. These revisions of our estimate of accrued income taxes, which also may result from our income tax planning and from the resolution of income tax controversies, may be material to our operating results for any given period.

### Goodwill and Intangible Assets

The nature of and accounting for goodwill and intangible assets are discussed in detail in *Note 1 – Summary of Significant Accounting Principles* and *Note 10 – Goodwill and Intangible Assets* to the Consolidated Financial Statements. Goodwill is reviewed for potential impairment at the reporting unit level on an annual basis which for the Corporation is performed as of June 30 or in interim periods if events or circumstances indicate a potential impairment. A reporting unit is a business segment or one level below. As reporting units are determined after an acquisition or evolve with changes in business strategy, goodwill is assigned and it no longer retains its association with a particular acquisition. All of the revenue streams and related activities of a reporting unit, whether acquired or organic, are available to support the value of the goodwill.

The Corporation's common stock price, consistent with common stock prices in the financial services industry, has been more volatile over the past 18 months primarily due to the deterioration in the financial markets in 2008 as the overall economy moved into a recession, followed in 2009 by stabilization and improvement in some sectors of the economy. During this period, our market capitalization remained below our recorded book value. The fair value of all reporting units as of the June 30, 2009 annual impairment test was estimated to be \$262.8 billion and the common stock market capitalization of the Corporation as of that date was \$114.2 billion (\$149.6 billion at December 31, 2009, including CES). The implied control premium or the amount a buyer is willing to pay over the current market price of a publicly traded stock to obtain control, was 52 percent after taking into consideration the outstanding preferred stock of \$58.7 billion as of June 30, 2009. As none of our reporting units are publicly traded, individual reporting unit fair value determinations are not directly correlated to the Corporation's stock price. Although we believe it is reasonable to conclude that market capitalization could be an indicator of fair value over time, we do not believe that recent fluctuations in our market capitalization as a result of the market dislocation are reflective of actual cash flows and the fair value of our individual reporting units.

Estimating the fair value of reporting units and the assets, liabilities and intangible assets of a reporting unit is a subjective process that involves the use of estimates and judgments, particularly related to cash flows, the appropriate discount rates and an applicable control premium. The fair values of the reporting units were determined using a combination of valuation techniques consistent with the market approach and the income approach and included the use of independent valuation specialists. Measurement of the fair values of the assets, liabilities and intangibles of a reporting unit was consistent with the requirements of the

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fair value measurements accounting guidance and includes the use of estimates and judgments. The fair values of the intangible assets were determined using the income approach.

The market approach we used results in an estimate of the fair value of the individual reporting units by incorporating any combination of the tangible capital, book capital and earnings multiples from comparable publicly traded companies in similar industries to that of the reporting unit. The relative weight assigned to these multiples varies among the reporting units based upon qualitative and quantitative characteristics, primarily the size and relative profitability of the respective reporting unit as compared to the comparable publicly traded companies. Since the fair values determined under the market approach are representative of a noncontrolling interest, a control premium was added to arrive at the fair values of the reporting units on a controlling basis.

For purposes of the income approach, discounted cash flows were calculated by taking the net present value of estimated cash flows using a combination of historical results, estimated future cash flows and an appropriate terminal value. Our discounted cash flow analysis employs a capital asset pricing model in estimating the discount rate (i.e., cost of equity financing) for each reporting unit. The inputs to this model include the risk-free rate of return; beta, a measure of the level of non-diversifiable risk associated with comparable companies for each specific reporting unit; market equity risk premium and in certain cases an unsystematic (company-specific) risk factor. The unsystematic risk factor is the input that specifically addresses uncertainty related to our projections of earnings and growth, including the uncertainty related to loss expectations. We utilized discount rates that we believe adequately reflect the risk and uncertainty in the financial markets generally and specifically in our internally developed forecasts. Expected rates of equity returns were estimated based on historical market returns and risk/return rates for similar industries to that of the reporting unit. We use our internal forecasts to estimate future cash flows and actual results may differ from forecasted results.

We perform our annual goodwill impairment test for all reporting units as of June 30 each year. In performing the first step of the annual impairment analysis, we compared the fair value of each reporting unit to its current carrying amount, including goodwill. To determine fair value, we used a combination of a market approach and an income approach. Under the market approach, we compared earnings and equity multiples of the individual reporting units to multiples of public companies comparable to the individual reporting units. The control premiums used in the June 30, 2009 annual impairment test ranged from 25 percent to 35 percent. Under the income approach, we updated our assumptions to reflect the current market environment. The discount rates used in the June 30, 2009 annual impairment test ranged from 11 percent to 20 percent depending on the relative risk of a reporting unit. Growth rates developed by management for each reporting unit and/or individual revenue and expense items ranged from two percent to 10 percent. For certain revenue and expense items that have been significantly affected by the current economic environment, management developed separate long-term forecasts.

Based on the results of step one of the impairment test, we determined that the carrying amount of the *Home Loans & Insurance* and *Global Card Services* reporting units, including goodwill, exceeded their fair value. The carrying amount of the reporting unit, fair value of the reporting unit and goodwill for *Home Loans & Insurance* were \$16.5 billion, \$14.3 billion and \$4.8 billion, respectively, and for *Global Card Services* were \$41.4 billion, \$41.3 billion and \$22.3 billion, respectively. Because the carrying amount exceeded the fair value, we performed step two of the goodwill impairment test for these reporting units as of June 30, 2009. For all other reporting units, step two was not required as

their fair value exceeded their carrying amount in step one indicating there was no impairment. In step two, we compared the implied fair value of each reporting unit's goodwill with the carrying amount of that goodwill. We determined the implied fair value of goodwill for a reporting unit by assigning the fair value of the reporting unit to all of the assets and liabilities of that unit, including any unrecognized intangible assets, as if the reporting unit had been acquired in a business combination. The excess of the fair value of the reporting unit over the amounts assigned to its assets and liabilities is the implied fair value of goodwill. Based on the results of step two of the impairment test as of June 30, 2009, we determined that goodwill was not impaired in the *Home Loans & Insurance* or *Global Card Services* reporting units.

In estimating the fair value of the reporting units in step one of the goodwill impairment analysis, we note that the fair values can be sensitive to changes in the projected cash flows and assumptions. In some instances, minor changes in the assumptions could impact whether the fair value of a reporting unit is greater than its carrying amount. Furthermore, a prolonged decrease or increase in a particular assumption could eventually lead to the fair value of a reporting unit being less than its carrying amount. Also, to the extent step two of the goodwill analysis is required, changes in the estimated fair values of the individual assets and liabilities may impact other estimates of fair value for assets or liabilities and result in a different amount of implied goodwill, and ultimately the amount of goodwill impairment, if any.

Given the results of our annual impairment test and due to continued stress on *Home Loans & Insurance* and *Global Card Services* as a result of current market conditions, we concluded that we should perform an additional impairment analysis for these two reporting units as of December 31, 2009. In step one of the goodwill impairment analysis, the fair value of *Home Loans & Insurance* was estimated with equal weighting assigned to the market approach and the income approach. The fair value of *Global Card Services* was estimated under the income approach. Under the market approach valuation for *Home Loans & Insurance*, significant assumptions were consistent with the assumptions used in our annual impairment tests as of June 30, 2009 and included market multiples and a control premium. In the *Global Card Services* valuation under the income approach, the significant assumptions included the discount rate, terminal value, expected loss rates and expected new account growth. Consistent with the June 30, 2009 annual impairment test, the carrying amount exceeded the fair value for *Home Loans & Insurance* requiring that we perform step two. Although *Global Card Services* passed step one of the goodwill impairment analysis, to further substantiate the value of the goodwill balance, we also performed the step two analysis for this reporting unit. The carrying amount of the reporting unit, fair value of the reporting unit and goodwill for *Home Loans & Insurance* were \$27.3 billion, \$20.3 billion and \$4.8 billion, respectively, and for *Global Card Services* were \$43.4 billion, \$47.3 billion and \$22.3 billion, respectively. The estimated fair value as a percent of the carrying amount at December 31, 2009 was 74 percent for *Home Loans & Insurance* and 109 percent for *Global Card Services*. The increase in the fair value of *Global Card Services* during the fourth quarter of 2009 was primarily attributable to improvement in market conditions and the economic outlook for the reporting unit. Under step two of the goodwill impairment analysis for both reporting units, significant assumptions in measuring the fair value of the assets and liabilities of the reporting units including discount rates, loss rates, interest rates and new account growth were updated in light of the improvement in economic conditions. Based on the results of step two of our impairment tests, there was no goodwill impairment as of December 31, 2009.

If economic conditions deteriorate or other events adversely impact the business models and the related assumptions including discount

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rates, loss rates, interest rates and new account growth used to value these reporting units, there could be a change in the valuation of our goodwill and intangible assets and may possibly result in the recognition of impairment losses. With any assumption change, when a prolonged change in performance causes the fair value of the reporting unit to fall below the carrying amount of goodwill, goodwill impairment will occur.

### Consolidation and Accounting for Variable Interest Entities

Under applicable accounting guidance, a VIE is consolidated by the entity that will absorb a majority of the variability created by the assets of the VIE. The calculation of variability is based on an analysis of projected probability-weighted cash flows based on the design of the particular VIE. Scenarios in which expected cash flows are less than or greater than the expected outcomes create expected losses or expected residual returns. The entity that will absorb a majority of expected variability (the sum of the absolute values of the expected losses and expected residual returns) consolidates the VIE and is referred to as the primary beneficiary.

A variety of qualitative and quantitative assumptions are used to estimate projected cash flows and the relative probability of each potential outcome, and to determine which parties will absorb expected losses and expected residual returns. Critical assumptions, which may include projected credit losses and interest rates, are independently verified against market observable data where possible. Where market observable data is not available, the results of the analysis become more subjective.

As certain events occur, we reconsider which parties will absorb variability and whether we have become or are no longer the primary beneficiary. The consolidation status of a VIE may change as a result of such reconsideration events, which occur when VIEs acquire additional assets, issue new variable interests or enter into new or modified contractual arrangements. A reconsideration event may also occur when we acquire new or additional interests in a VIE.

See the Impact of Adopting New Accounting Guidance on Consolidation section on page 52 for a discussion of new accounting that significantly changes the criteria for consolidation effective January 1, 2010.

### 2008 Compared to 2007

The following discussion and analysis provides a comparison of our results of operations for 2008 and 2007. This discussion should be read in conjunction with the Consolidated Financial Statements and related Notes. Tables 6 and 7 contain financial data to supplement this discussion.

### Overview

#### Net Income

Net income totaled \$4.0 billion in 2008 compared to \$15.0 billion in 2007. Including preferred stock dividends, income applicable to common shareholders was \$2.6 billion, or \$0.54 per diluted share. Those results compared with 2007 net income available to common shareholders of \$14.8 billion, or \$3.29 per diluted share. The return on average common shareholders' equity was 1.80 percent in 2008 compared to 11.08 percent in 2007.

#### Net Interest Income

Net interest income on a FTE basis increased \$10.4 billion to \$46.6 billion for 2008 compared to 2007. The increase was driven by strong loan growth, as well as the acquisitions of Countrywide and LaSalle, and the contribution from market-based net interest income related to our *Global*

*Markets* business, which benefited from the steepening of the yield curve and product mix. The net interest yield on a FTE basis increased 38 bps to 2.98 percent for 2008 compared to 2007, due to the improvement in market-based yield, the beneficial impact of the current interest rate environment and loan growth. Partially offsetting these increases were the additions of lower yielding assets from the Countrywide and LaSalle acquisitions.

#### Noninterest Income

Noninterest income decreased \$5.0 billion to \$27.4 billion in 2008 compared to 2007.

- Card income decreased \$763 million primarily due to the negative impact of higher credit costs on securitized credit card loans and the related unfavorable change in value of the interest-only strip as well as decreases in interchange income and late fees. Partially offsetting these decreases was higher debit card income.
- Service charges grew \$1.4 billion resulting from growth in new deposit accounts and the beneficial impact of the LaSalle acquisition.
- Investment and brokerage services decreased \$175 million primarily due to the absence of fees related to the sale of a business that we sold in late 2007 and the impact of significantly lower valuations in the equity markets, partially offset by the full year impact of the U.S. Trust and LaSalle acquisitions.
- Investment banking income decreased \$82 million due to reduced advisory fees related to the slowing economy.
- Equity investment income decreased \$3.5 billion due to a reduction in gains from our Global Principal Investments portfolio attributable to the lack of liquidity in the marketplace when compared to 2007 and other-than-temporary impairments taken on certain AFS marketable equity securities.
- Trading account losses increased \$1.0 billion in 2008 driven by losses related to CDO exposure and the continuing impact of the market disruptions on various parts of *Global Markets*.
- Mortgage banking income increased \$3.2 billion in large part as a result of the Countrywide acquisition which contributed significantly to increases in servicing income of \$1.7 billion and production income of \$1.5 billion.
- Insurance premiums increased \$1.1 billion primarily due to the Countrywide acquisition.
- Gains on sales of debt securities increased \$944 million driven by the sales of MBS and CMOs.
- Other income decreased \$2.9 billion due to *Global Markets* related write-downs and \$1.1 billion associated with the support provided to certain cash funds managed within *GWIM*. In addition, 2008 was impacted by the absence of the \$1.5 billion gain from the sale of a business in 2007. These items were partially offset by the gain of \$776 million related to the Visa IPO.
- Net impairment losses recognized in earnings on AFS debt securities increased \$3.1 billion primarily due to CDO related write-downs.

#### Provision for Credit Losses

The provision for credit losses increased \$18.4 billion to \$26.8 billion for 2008 compared to 2007 due to an increase of \$9.8 billion in net charge-offs and higher additions to the reserve. The majority of the reserve additions were in consumer and small business portfolios, reflecting increased weakness in the housing markets and the slowing economy. Reserves were also increased on commercial portfolios for deterioration in the homebuilder and non-homebuilder commercial portfolios within *Global Banking*.



## Noninterest Expense

Noninterest expense increased \$4.0 billion to \$41.5 billion for 2008 compared to 2007, primarily due to the acquisitions of Countrywide and LaSalle, which increased various expense categories, partially offset by a reduction in performance-based incentive compensation expense and the impact of certain benefits associated with the Visa IPO transactions.

## Income Tax Expense

Income tax expense was \$420 million for 2008 compared to \$5.9 billion for 2007 resulting in effective tax rates of 9.5 percent and 28.4 percent. The effective tax rate decrease was due to permanent tax preference amounts (e.g., tax exempt income and tax credits) offsetting a higher percentage of our pre-tax income.

## Business Segment Operations

### Deposits

Net income increased \$438 million, or nine percent, to \$5.5 billion compared to 2007 driven by higher net interest income and noninterest income partially offset by an increase in noninterest expense. Net interest income increased \$755 million, or seven percent, driven by a higher contribution from our ALM activities and growth in average deposits partially offset by the impact of competitive deposit pricing. Average deposits grew \$33.3 billion, or 10 percent, due to organic growth, including customers' flight-to-safety, as well as the acquisitions of Countrywide and LaSalle. Organic growth was partially offset by the migration of customer relationships and related deposit balances to *GWIM*. Noninterest income increased \$683 million, or 11 percent, to \$6.9 billion driven by an increase of \$798 million, or 13 percent, in service charges primarily as a result of increased volume, new demand deposit account growth and the addition of LaSalle. Noninterest expense increased \$433 million, or five percent, to \$8.8 billion compared to 2007, primarily due to the LaSalle and Countrywide acquisitions, combined with an increase in accounts and transaction volumes.

### Global Card Services

Net income decreased \$3.0 billion, or 71 percent, to \$1.2 billion compared to 2007 as growth in net interest income and noninterest income was more than offset by an \$8.5 billion increase in provision for credit losses. Net interest income grew \$3.0 billion, or 18 percent, to \$19.6 billion driven by higher managed average loans of \$22.3 billion, or 10 percent, combined with the beneficial impact of the decrease in short-term interest rates on our funding costs. Noninterest income increased \$485 million, or four percent, to \$11.6 billion as other income benefited from the \$388 million gain related to *Global Card Services*' allocation of the Visa IPO gain as well as a \$283 million gain on the sale of a card portfolio. These increases were partially offset by the decrease in card income of \$137 million, or one percent, due to the unfavorable change in the value of the interest-only strip and decreases in interchange income driven by reduced retail volume and late fees. These decreases were partially offset by higher debit card income due to new account and card growth, increased usage and the addition of LaSalle. Provision for credit losses increased \$8.5 billion, or 73 percent, to \$20.2 billion compared to 2007 primarily driven by portfolio deterioration and higher bankruptcies from impacts of the slowing economy, a lower level of foreign securitizations and growth-related seasoning of the portfolio. Noninterest expense decreased \$217 million, or two percent, to \$9.2 billion compared to 2007, as the impact of certain benefits associated with the Visa IPO transactions and lower marketing expense were partially offset by higher personnel and technology-related expenses from increased customer assistance and collections infrastructure.

## Home Loans & Insurance

*Home Loans & Insurance* net income decreased \$2.6 billion to a net loss of \$2.5 billion compared to 2007 as growth in noninterest income and net interest income was more than offset by higher provision for credit losses and an increase in noninterest expense. Net interest income grew \$1.4 billion, or 74 percent, driven primarily by an increase in average home equity loans and LHFS. The growth in average home equity loans of \$32.9 billion, or 45 percent, and a \$5.5 billion increase in LHFS were attributable to the Countrywide and LaSalle acquisitions as well as increases in our home equity portfolio as a result of slower prepayment speeds and organic growth. Noninterest income increased \$4.2 billion to \$6.0 billion compared to 2007 driven by increases in mortgage banking income and insurance income. Mortgage banking income grew \$3.1 billion due primarily to the acquisition of Countrywide combined with increases in the value of MSR economic hedge instruments partially offset by a decrease in the value of MSRs. Insurance income increased \$1.1 billion due to the acquisition of Countrywide. Provision for credit losses increased \$5.3 billion to \$6.3 billion compared to 2007. This increase was driven primarily by higher losses inherent in the home equity portfolio reflecting deterioration in the housing markets particularly in geographic areas that have experienced higher levels of declines in home prices. This drove more severe charge-offs as borrowers defaulted. Noninterest expense increased \$4.4 billion to \$7.0 billion primarily driven by the Countrywide acquisition.

## Global Banking

Net income increased \$341 million, or eight percent, to \$4.5 billion in 2008 compared to 2007 as increased total revenue and lower noninterest expense were partially offset by an increase in provision for credit losses. Net interest income increased \$2.1 billion, or 24 percent, driven by growth in average loans and leases of \$64.1 billion, or 25 percent, and average deposits of \$29.6 billion, or 20 percent. The increases in average loans and leases and average deposits were driven by the LaSalle acquisition and organic growth. Noninterest income decreased \$42 million, or one percent, as *Global Banking's* share of write-downs on legacy assets was partially offset by an increase in service charges and the \$388 million gain related to *Global Banking's* allocation of the Visa IPO gain. The increase in service charges was driven by organic growth, changes in our pricing structure and the LaSalle acquisition. The provision for credit losses increased \$2.5 billion to \$3.1 billion in 2008 compared to 2007. The increase was primarily driven by reserve additions and higher charge-offs primarily due to the continued weakness in the housing markets on the homebuilder portfolio. Also contributing to this increase were higher commercial – domestic and foreign net charge-offs which increased from very low 2007 levels and higher net charge-offs and reserve increases in the retail dealer-related loan portfolios due to deterioration and seasoning of the portfolio. Noninterest expense decreased \$874 million, or 12 percent, primarily due to lower incentive compensation and the impact of certain benefits associated with the Visa IPO transactions, partially offset by the addition of LaSalle.

## Global Markets

*Global Markets* recognized a net loss of \$4.9 billion in 2008 compared to a net loss of \$3.8 billion in 2007 as increased net interest income and reduced noninterest expense were more than offset by increased sales and trading losses. Sales and trading revenue was a net loss of \$6.9 billion in 2008 as compared to a net loss of \$2.6 billion in 2007. These decreases were driven by losses related to CDO exposure, our hedging activities including counterparty credit risk valuations and the continuing impact of the market disruptions on various parts of our business including the severe volatility, illiquidity and credit dislocations that

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were experienced in the debt and equity markets in the fourth quarter of 2008. Partially offsetting these declines were favorable results in our rates and currencies products which benefited from volatility in interest rates and foreign exchange markets which also drove favorable client flows. Noninterest expense declined \$834 million primarily due to lower performance-based incentive compensation.

### **Global Wealth & Investment Management**

Net income decreased \$527 million, or 27 percent, to \$1.4 billion in 2008 as increases in net interest income and investment and brokerage services income were more than offset by losses associated with the support provided to certain cash funds, increases in provision for credit losses and noninterest expense as well as losses related to the buyback of ARS. Net interest income increased \$877 million, or 22 percent, to \$4.8 billion due to higher margin on ALM activities, the acquisitions of U.S. Trust Corporation and LaSalle, and growth in average deposit and loan balances partially offset by spread compression driven by deposit mix and competitive deposit pricing. *GWIM* average deposit growth benefited from the migration of customer relationships and related balances from *Deposits*, organic growth and the U.S. Trust Corporation and LaSalle acquisitions. Noninterest income decreased \$625 million, or 17 percent, to \$3.0 billion driven by \$1.1 billion in losses during 2008 related to the support provided to certain cash funds and losses of \$181 million related to the buyback of ARS. These losses were partially offset by an increase of \$278 million in investment and brokerage services resulting from the U.S. Trust Corporation acquisition partially offset by the impact of significantly lower valuations in the equity markets. Provision for credit losses increased \$649 million to \$664 million as a result of higher credit

costs due to the deterioration in the housing markets and the impacts of a slower economy. Noninterest expense increased \$419 million, or nine percent, to \$4.9 billion due to the addition of U.S. Trust Corporation and LaSalle, and higher initiative spending partially offset by lower discretionary incentive compensation.

### **All Other**

Net income decreased \$4.5 billion to a net loss of \$1.2 billion due to a decrease in total revenue combined with increases in provision for credit losses and merger and restructuring charges. Net interest income increased \$113 million primarily due to increased net interest income related to our functional activities partially offset by the reclassification to card income related to our funds transfer pricing for *Global Card Services*' securitizations. Noninterest income declined \$3.3 billion to \$820 million driven by decreases in equity investment income of \$3.5 billion and all other income (loss) of \$1.2 billion partially offset by increases in gains on sales of debt securities of \$953 million and card income of \$653 million. Excluding the securitization offset to present *Global Card Services* on a managed basis provision for credit losses increased \$3.2 billion to \$2.9 billion primarily due to higher credit costs related to our ALM, residential mortgage portfolio reflecting deterioration in the housing markets and the impacts of a slowing economy. Additionally, deterioration in our Countrywide discontinued real estate portfolio subsequent to the July 1, 2008 acquisition as well as the absence of 2007 reserve reductions also contributed to the increase in provision. Merger and restructuring charges increased \$525 million to \$935 million due to the integration costs associated with the Countrywide and LaSalle acquisitions.

**Statistical Tables**

**Table I Year-to-date Average Balances and Interest Rates – FTE Basis**

	2009			2008			2007		
	Average Balance	Interest Income/Expense	Yield/Rate	Average Balance	Interest Income/Expense	Yield/Rate	Average Balance	Interest Income/Expense	Yield/Rate
(Dollars in millions)									
<b>Earning assets</b>									
Time deposits placed and other short-term investments	\$ 27,465	\$ 713	2.60%	\$ 10,696	\$ 440	4.11%	\$ 13,152	\$ 627	4.77%
Federal funds sold and securities borrowed or purchased under agreements to resell	235,764	2,894	1.23	128,053	3,313	2.59	155,828	7,722	4.96
Trading account assets	217,048	8,236	3.79	186,579	9,259	4.96	187,287	9,747	5.20
Debt securities <sup>(1)</sup>	271,048	13,224	4.88	250,551	13,383	5.34	186,466	10,020	5.37
Loans and leases <sup>(2)</sup> :									
Residential mortgage <sup>(3)</sup>	249,335	13,535	5.43	260,244	14,657	5.63	264,650	15,112	5.71
Home equity	154,761	6,736	4.35	135,060	7,606	5.63	98,765	7,385	7.48
Discontinued real estate	17,340	1,082	6.24	10,898	858	7.87	n/a	n/a	n/a
Credit card – domestic	52,378	5,666	10.82	63,318	6,843	10.81	57,883	7,225	12.48
Credit card – foreign	19,655	2,122	10.80	16,527	2,042	12.36	12,359	1,502	12.15
Direct/Indirect consumer <sup>(4)</sup>	99,993	6,016	6.02	82,516	6,934	8.40	70,009	6,002	8.57
Other consumer <sup>(5)</sup>	3,303	237	7.17	3,816	321	8.41	4,510	389	8.64
Total consumer	596,765	35,394	5.93	572,379	39,261	6.86	508,176	37,615	7.40
Commercial – domestic	223,813	8,883	3.97	220,561	11,702	5.31	180,102	12,884	7.15
Commercial real estate <sup>(6)</sup>	73,349	2,372	3.23	63,208	3,057	4.84	42,950	3,145	7.32
Commercial lease financing	21,979	990	4.51	22,290	799	3.58	20,435	1,212	5.93
Commercial – foreign	32,899	1,406	4.27	32,440	1,503	4.63	24,491	1,452	5.93
Total commercial	352,040	13,651	3.88	338,499	17,061	5.04	267,978	18,693	6.98
Total loans and leases	948,805	49,045	5.17	910,878	56,322	6.18	776,154	56,308	7.25
Other earning assets	130,063	5,105	3.92	75,972	4,161	5.48	71,305	4,629	6.49
<b>Total earning assets <sup>(7)</sup></b>	<b>1,830,193</b>	<b>79,217</b>	<b>4.33</b>	<b>1,562,729</b>	<b>86,878</b>	<b>5.56</b>	<b>1,390,192</b>	<b>89,053</b>	<b>6.41</b>
Cash and cash equivalents	196,237			45,354			33,091		
Other assets, less allowance for loan and lease losses	411,087			235,896			178,790		
<b>Total assets</b>	<b>\$2,437,517</b>			<b>\$1,843,979</b>			<b>\$1,602,073</b>		
<b>Interest-bearing liabilities</b>									
Domestic interest-bearing deposits:									
Savings	\$ 33,671	\$ 215	0.64%	\$ 32,204	\$ 230	0.71%	\$ 32,316	\$ 188	0.58%
NOW and money market deposit accounts	358,847	1,557	0.43	267,818	3,781	1.41	220,207	4,361	1.98
Consumer CDs and IRAs	218,041	5,054	2.32	203,887	7,404	3.63	167,801	7,817	4.66
Negotiable CDs, public funds and other time deposits	37,661	473	1.26	32,264	1,076	3.33	20,557	974	4.74
Total domestic interest-bearing deposits	648,220	7,299	1.13	536,173	12,491	2.33	440,881	13,340	3.03
Foreign interest-bearing deposits:									
Banks located in foreign countries	19,397	144	0.74	37,657	1,063	2.82	42,788	2,174	5.08
Governments and official institutions	7,580	18	0.23	13,004	311	2.39	16,523	812	4.91
Time, savings and other	55,026	346	0.63	51,363	1,385	2.70	43,443	1,767	4.07
Total foreign interest-bearing deposits	82,003	508	0.62	102,024	2,759	2.70	102,754	4,753	4.63
Total interest-bearing deposits	730,223	7,807	1.07	638,197	15,250	2.39	543,635	18,093	3.33
Federal funds purchased, securities loaned or sold under agreements to repurchase and other short-term borrowings									
	488,644	5,512	1.13	455,710	12,362	2.71	424,814	21,967	5.17
Trading account liabilities	72,207	2,075	2.87	72,915	2,774	3.80	82,721	3,444	4.16
Long-term debt	446,634	15,413	3.45	231,235	9,938	4.30	169,855	9,359	5.51
<b>Total interest-bearing liabilities <sup>(7)</sup></b>	<b>1,737,708</b>	<b>30,807</b>	<b>1.77</b>	<b>1,398,057</b>	<b>40,324</b>	<b>2.88</b>	<b>1,221,025</b>	<b>52,863</b>	<b>4.33</b>
Noninterest-bearing sources:									
Noninterest-bearing deposits	250,743			192,947			173,547		
Other liabilities	204,421			88,144			70,839		
Shareholders' equity	244,645			164,831			136,662		
<b>Total liabilities and shareholders' equity</b>	<b>\$2,437,517</b>			<b>\$1,843,979</b>			<b>\$1,602,073</b>		
Net interest spread			2.56%			2.68%			2.08%
Impact of noninterest-bearing sources			0.09			0.30			0.52
<b>Net interest income/yield on earning assets</b>		<b>\$ 48,410</b>	<b>2.65%</b>		<b>\$ 46,554</b>	<b>2.98%</b>		<b>\$ 36,190</b>	<b>2.60%</b>

<sup>(1)</sup>Yields on AFS debt securities are calculated based on fair value rather than the cost basis. The use of fair value does not have a material impact on net interest yield.

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

<sup>(3)</sup>Includes foreign residential mortgages loans of \$622 million in 2009. We did not have any material foreign residential mortgage loans prior to January 1, 2009.

<sup>(4)</sup>Includes foreign consumer loans of \$8.0 billion, \$2.7 billion and \$3.8 billion in 2009, 2008 and 2007, respectively.

<sup>(5)</sup>Includes consumer finance loans of \$2.4 billion, \$2.8 billion and \$3.2 billion in 2009, 2008 and 2007, respectively; and other foreign consumer loans of \$657 million, \$774 million and \$1.1 billion in 2009, 2008 and 2007, respectively.

<sup>(6)</sup>Includes domestic commercial real estate loans of \$70.7 billion, \$62.1 billion and \$42.1 billion in 2009, 2008 and 2007, respectively; and foreign commercial real estate loans of \$2.7 billion, \$1.1 billion and \$858 million in 2009, 2008 and 2007.

<sup>(7)</sup>Interest income includes the impact of interest rate risk management contracts, which decreased interest income on the underlying assets \$456 million, \$260 million and \$542 million in 2009, 2008 and 2007, respectively. Interest expense includes the impact of interest rate risk management contracts, which increased (decreased) interest expense on the underlying liabilities \$(3.0) billion, \$409 million and \$813 million in 2009, 2008 and 2007, respectively. For further information on interest rate contracts, see Interest Rate Risk Management for Nontrading Activities beginning on page 83.

n/a= not applicable

**Table II Analysis of Changes in Net Interest Income – FTE Basis**

(Dollars in millions)	From 2008 to 2009			From 2007 to 2008		
	Due to Change in <sup>(1)</sup>		Net Change	Due to Change in <sup>(1)</sup>		Net Change
	Volume	Rate		Volume	Rate	
<b>Increase (decrease) in interest income</b>						
Time deposits placed and other short-term investments	\$ 689	\$ (416)	\$ 273	\$ (117)	\$ (70)	\$ (187)
Federal funds sold and securities borrowed or purchased under agreements to resell	2,793	(3,212)	(419)	(1,371)	(3,038)	(4,409)
Trading account assets	1,507	(2,530)	(1,023)	(45)	(443)	(488)
Debt securities	1,091	(1,250)	(159)	3,435	(72)	3,363
Loans and leases:						
Residential mortgage	(619)	(503)	(1,122)	(252)	(203)	(455)
Home equity	1,107	(1,977)	(870)	2,717	(2,496)	221
Discontinued real estate	507	(283)	224	n/a	n/a	858
Credit card – domestic	(1,181)	4	(1,177)	677	(1,059)	(382)
Credit card – foreign	387	(307)	80	506	34	540
Direct/Indirect consumer	1,465	(2,383)	(918)	1,070	(138)	932
Other consumer	(43)	(41)	(84)	(59)	(9)	(68)
Total consumer			(3,867)			1,646
Commercial – domestic	182	(3,001)	(2,819)	2,886	(4,068)	(1,182)
Commercial real estate	493	(1,178)	(685)	1,482	(1,570)	(88)
Commercial lease financing	(12)	203	191	110	(523)	(413)
Commercial – foreign	20	(117)	(97)	472	(421)	51
Total commercial			(3,410)			(1,632)
Total loans and leases			(7,277)			14
Other earning assets	2,966	(2,022)	944	302	(770)	(468)
Total interest income			\$ (7,661)			\$ (2,175)
<b>Increase (decrease) in interest expense</b>						
Domestic interest-bearing deposits:						
Savings	\$ 9	\$ (24)	\$ (15)	\$ (1)	\$ 43	\$ 42
NOW and money market deposit accounts	1,279	(3,503)	(2,224)	942	(1,522)	(580)
Consumer CDs and IRAs	511	(2,861)	(2,350)	1,684	(2,097)	(413)
Negotiable CDs, public funds and other time deposits	178	(781)	(603)	555	(453)	102
Total domestic interest-bearing deposits			(5,192)			(849)
Foreign interest-bearing deposits:						
Banks located in foreign countries	(516)	(403)	(919)	(261)	(850)	(1,111)
Governments and official institutions	(130)	(163)	(293)	(174)	(327)	(501)
Time, savings and other	101	(1,140)	(1,039)	323	(705)	(382)
Total foreign interest-bearing deposits			(2,251)			(1,994)
Total interest-bearing deposits			(7,443)			(2,843)
Federal funds purchased, securities loaned or sold under agreements to repurchase and other short-term borrowings	880	(7,730)	(6,850)	1,593	(11,198)	(9,605)
Trading account liabilities	(30)	(669)	(699)	(411)	(259)	(670)
Long-term debt	9,267	(3,792)	5,475	3,382	(2,803)	579
Total interest expense			(9,517)			(12,539)
<b>Net increase in net interest income</b>			<b>\$ 1,856</b>			<b>\$ 10,364</b>

<sup>(1)</sup>The changes for each category of interest income and expense are divided between the portion of change attributable to the variance in volume and the portion of change attributable to the variance in rate for that category. The unallocated change in rate or volume variance is allocated between the rate and volume variances.

n/a= not applicable

**Table III Preferred Stock Cash Dividend Summary (as of February 26, 2010)**

Preferred Stock	Outstanding Notional Amount (in millions)	Declaration Date	Record Date	Payment Date	Per Annum Dividend Rate	Dividend Per Share
Series B <sup>(1)</sup>	\$ 1	January 27, 2010	April 9, 2010	April 23, 2010	7.00%	\$ 1.75
		October 28, 2009	January 11, 2010	January 25, 2010	7.00	1.75
		July 21, 2009	October 9, 2009	October 23, 2009	7.00	1.75
		April 29, 2009	July 10, 2009	July 24, 2009	7.00	1.75
		January 16, 2009	April 10, 2009	April 24, 2009	7.00	1.75
Series D <sup>(2)</sup>	\$ 661	January 4, 2010	February 26, 2010	March 15, 2010	6.204%	\$ 0.38775
		October 2, 2009	November 30, 2009	December 14, 2009	6.204	0.38775
		July 2, 2009	August 31, 2009	September 14, 2009	6.204	0.38775
		April 3, 2009	May 29, 2009	June 15, 2009	6.204	0.38775
		January 5, 2009	February 27, 2009	March 16, 2009	6.204	0.38775
Series E <sup>(2)</sup>	\$ 487	January 4, 2010	January 29, 2010	February 16, 2010	Floating	\$ 0.25556
		October 2, 2009	October 30, 2009	November 16, 2009	Floating	0.25556
		July 2, 2009	July 31, 2009	August 17, 2009	Floating	0.25556
		April 3, 2009	April 30, 2009	May 15, 2009	Floating	0.24722
		January 5, 2009	January 30, 2009	February 17, 2009	Floating	0.25556
Series H <sup>(2)</sup>	\$ 2,862	January 4, 2010	January 15, 2010	February 1, 2010	8.20%	\$ 0.51250
		October 2, 2009	October 15, 2009	November 2, 2009	8.20	0.51250
		July 2, 2009	July 15, 2009	August 3, 2009	8.20	0.51250
		April 3, 2009	April 15, 2009	May 1, 2009	8.20	0.51250
		January 5, 2009	January 15, 2009	February 2, 2009	8.20	0.51250
Series I <sup>(2)</sup>	\$ 365	January 4, 2010	March 15, 2010	April 1, 2010	6.625%	\$ 0.41406
		October 2, 2009	December 15, 2009	January 4, 2010	6.625	0.41406
		July 2, 2009	September 15, 2009	October 1, 2009	6.625	0.41406
		April 3, 2009	June 15, 2009	July 1, 2009	6.625	0.41406
		January 5, 2009	March 15, 2009	April 1, 2009	6.625	0.41406
Series J <sup>(2)</sup>	\$ 978	January 4, 2010	January 15, 2010	February 1, 2010	7.25%	\$ 0.45312
		October 2, 2009	October 15, 2009	November 2, 2009	7.25	0.45312
		July 2, 2009	July 15, 2009	August 3, 2009	7.25	0.45312
		April 3, 2009	April 15, 2009	May 1, 2009	7.25	0.45312
		January 5, 2009	January 15, 2009	February 2, 2009	7.25	0.45312
Series K <sup>(3, 4)</sup>	\$ 1,668	January 4, 2010	January 15, 2010	February 1, 2010	Fixed-to-Floating	\$ 40.00
		July 2, 2009	July 15, 2009	July 30, 2009	Fixed-to-Floating	40.00
		January 5, 2009	January 15, 2009	January 30, 2009	Fixed-to-Floating	40.00
Series L	\$ 3,349	December 17, 2009	January 1, 2010	February 1, 2010	7.25%	\$ 18.1250
		September 18, 2009	October 1, 2009	October 30, 2009	7.25	18.1250
		June 19, 2009	July 1, 2009	July 30, 2009	7.25	18.1250
		March 17, 2009	April 1, 2009	April 30, 2009	7.25	18.1250
Series M <sup>(3, 4)</sup>	\$ 1,434	October 2, 2009	October 31, 2009	November 16, 2009	Fixed-to-Floating	\$ 40.625
		April 3, 2009	April 30, 2009	May 15, 2009	Fixed-to-Floating	40.625
Series N <sup>(1, 5)</sup>	\$ -	October 2, 2009	October 31, 2009	November 16, 2009	5.00%	\$ 312.50
		July 2, 2009	July 31, 2009	August 17, 2009	5.00	312.50
		April 3, 2009	April 30, 2009	May 15, 2009	5.00	312.50
		January 5, 2009 <sup>(6)</sup>	January 31, 2009	February 17, 2009	5.00	371.53
Series Q <sup>(1, 5)</sup>	\$ -	October 2, 2009	October 31, 2009	November 16, 2009	5.00%	\$ 312.50
		July 2, 2009	July 31, 2009	August 17, 2009	5.00	312.50
		April 3, 2009	April 30, 2009	May 15, 2009	5.00	312.50
		January 5, 2009 <sup>(6)</sup>	January 31, 2009	February 17, 2009	5.00	125.00
Series R <sup>(1, 5)</sup>	\$ -	October 2, 2009	October 31, 2009	November 16, 2009	8.00%	\$ 500.00
		July 2, 2009	July 31, 2009	August 17, 2009	8.00	500.00
		April 3, 2009	April 30, 2009	May 15, 2009	8.00	500.00
		January 5, 2009 <sup>(6)</sup>	January 31, 2009	February 17, 2009	8.00	161.11

**Preferred Stock Cash Dividend Summary (as of February 26, 2010) continued**

Preferred Stock	Outstanding Notional Amount (in millions)	Declaration Date	Record Date	Payment Date	Per Annum Dividend Rate	Dividend Per Share
Series 1 <sup>(7)</sup>	\$ 146	January 4, 2010	February 15, 2010	February 26, 2010	Floating	\$ 0.19167
		October 2, 2009	November 15, 2009	November 30, 2009	Floating	0.19167
		July 2, 2009	August 15, 2009	August 28, 2009	Floating	0.19167
		April 3, 2009	May 15, 2009	May 28, 2009	Floating	0.18542
		January 5, 2009	February 15, 2009	February 27, 2009	Floating	0.19167
Series 2 <sup>(7)</sup>	\$ 526	January 4, 2010	February 15, 2010	February 26, 2010	Floating	\$ 0.19167
		October 2, 2009	November 15, 2009	November 30, 2009	Floating	0.19167
		July 2, 2009	August 15, 2009	August 28, 2009	Floating	0.19167
		April 3, 2009	May 15, 2009	May 28, 2009	Floating	0.18542
		January 5, 2009	February 15, 2009	February 27, 2009	Floating	0.19167
Series 3 <sup>(7)</sup>	\$ 670	January 4, 2010	February 15, 2010	March 1, 2010	6.375%	\$ 0.39843
		October 2, 2009	November 15, 2009	November 30, 2009	6.375	0.39843
		July 2, 2009	August 15, 2009	August 28, 2009	6.375	0.39843
		April 3, 2009	May 15, 2009	May 28, 2009	6.375	0.39843
		January 5, 2009	February 15, 2009	March 2, 2009	6.375	0.39843
Series 4 <sup>(7)</sup>	\$ 389	January 4, 2010	February 15, 2010	February 26, 2010	Floating	\$ 0.25556
		October 2, 2009	November 15, 2009	November 30, 2009	Floating	0.25556
		July 2, 2009	August 15, 2009	August 28, 2009	Floating	0.25556
		April 3, 2009	May 15, 2009	May 28, 2009	Floating	0.24722
		January 5, 2009	February 15, 2009	February 27, 2009	Floating	0.25556
Series 5 <sup>(7)</sup>	\$ 606	January 4, 2010	February 1, 2010	February 22, 2010	Floating	\$ 0.25556
		October 2, 2009	November 1, 2009	November 23, 2009	Floating	0.25556
		July 2, 2009	August 1, 2009	August 21, 2009	Floating	0.25556
		April 3, 2009	May 1, 2009	May 21, 2009	Floating	0.24722
		January 5, 2009	February 1, 2009	February 23, 2009	Floating	0.25556
Series 6 <sup>(8)</sup>	\$ 65	January 4, 2010	March 15, 2010	March 30, 2010	6.70%	\$ 0.41875
		October 2, 2009	December 15, 2009	December 30, 2009	6.70	0.41875
		July 2, 2009	September 15, 2009	September 30, 2009	6.70	0.41875
		April 3, 2009	June 15, 2009	June 30, 2009	6.70	0.41875
		January 5, 2009	March 15, 2009	March 30, 2009	6.70	0.41875
Series 7 <sup>(8)</sup>	\$ 17	January 4, 2010	March 15, 2010	March 30, 2010	6.25%	\$ 0.39062
		October 2, 2009	December 15, 2009	December 30, 2009	6.25	0.39062
		July 2, 2009	September 15, 2009	September 30, 2009	6.25	0.39062
		April 3, 2009	June 15, 2009	June 30, 2009	6.25	0.39062
		January 5, 2009	March 15, 2009	March 30, 2009	6.25	0.39062
Series 8 <sup>(7)</sup>	\$ 2,673	January 4, 2010	February 15, 2010	March 1, 2010	8.625%	\$ 0.53906
		October 2, 2009	November 15, 2009	November 30, 2009	8.625	0.53906
		July 2, 2009	August 15, 2009	August 28, 2009	8.625	0.53906
		April 3, 2009	May 15, 2009	May 28, 2009	8.625	0.53906
		January 5, 2009	February 15, 2009	March 2, 2009	8.625	0.53906
Series 2 (MC) <sup>(9)</sup>	\$ 1,200	January 4, 2010	February 15, 2010	March 1, 2010	9.00%	\$ 2,250.00
		October 2, 2009	November 15, 2009	November 30, 2009	9.00	2,250.00
		July 2, 2009	August 15, 2009	August 28, 2009	9.00	2,250.00
		April 3, 2009	May 15, 2009	May 28, 2009	9.00	2,250.00
		January 21, 2009	February 15, 2009	March 2, 2009	9.00	2,250.00
Series 3 (MC) <sup>(9)</sup>	\$ 500	January 4, 2010	February 15, 2010	March 1, 2010	9.00%	\$ 2,250.00
		October 2, 2009	November 15, 2009	November 30, 2009	9.00	2,250.00
		July 2, 2009	August 15, 2009	August 28, 2009	9.00	2,250.00
		April 3, 2009	May 15, 2009	May 28, 2009	9.00	2,250.00
		January 21, 2009	February 15, 2009	March 2, 2009	9.00	2,250.00

<sup>(1)</sup>Dividends are cumulative.

<sup>(2)</sup>Dividends per depositary share, each representing a 1/1000<sup>th</sup> interest in a share of preferred stock.

<sup>(3)</sup>Initially pays dividends semi-annually.

<sup>(4)</sup>Dividends per depositary share, each representing 1/25<sup>th</sup> interest in a share of preferred stock.

<sup>(5)</sup>In connection with the repurchase of the TARP preferred stock on December 9, 2009, the Corporation paid accrued and unpaid dividends to the date of repurchase of \$83.33, \$83.33 and \$133.33 per share for Series N, Q and R, respectively.

<sup>(6)</sup>Initial dividends

<sup>(7)</sup>Dividends per depositary share, each representing a 1/1200<sup>th</sup> interest in a share of preferred stock.

<sup>(8)</sup>Dividends per depositary share, each representing 1/40<sup>th</sup> interest in a share of preferred stock.

<sup>(9)</sup>Represents preferred stock of Merrill Lynch & Co., Inc. which is mandatorily convertible (MC) on October 15, 2010, but optionally convertible prior to that date.

**Table IV Outstanding Loans and Leases**

(Dollars in millions)	December 31				
	2009	2008	2007	2006	2005
<b>Consumer</b>					
Residential mortgage <sup>(1)</sup>	\$ 242,129	\$ 248,063	\$ 274,949	\$ 241,181	\$ 182,596
Home equity	149,126	152,483	114,820	87,893	70,229
Discontinued real estate <sup>(2)</sup>	14,854	19,981	n/a	n/a	n/a
Credit card – domestic	49,453	64,128	65,774	61,195	58,548
Credit card – foreign	21,656	17,146	14,950	10,999	–
Direct/Indirect consumer <sup>(3)</sup>	97,236	83,436	76,538	59,206	37,265
Other consumer <sup>(4)</sup>	3,110	3,442	4,170	5,231	6,819
<b>Total consumer</b>	<b>577,564</b>	<b>588,679</b>	<b>551,201</b>	<b>465,705</b>	<b>355,457</b>
<b>Commercial</b>					
Commercial – domestic <sup>(5)</sup>	198,903	219,233	208,297	161,982	140,533
Commercial real estate <sup>(6)</sup>	69,447	64,701	61,298	36,258	35,766
Commercial lease financing	22,199	22,400	22,582	21,864	20,705
Commercial – foreign	27,079	31,020	28,376	20,681	21,330
Total commercial loans-excluding loans measured at fair value	317,628	337,354	320,553	240,785	218,334
Commercial loans measured at fair value <sup>(7)</sup>	4,936	5,413	4,590	n/a	n/a
<b>Total commercial</b>	<b>322,564</b>	<b>342,767</b>	<b>325,143</b>	<b>240,785</b>	<b>218,334</b>
<b>Total loans and leases</b>	<b>\$ 900,128</b>	<b>\$ 931,446</b>	<b>\$ 876,344</b>	<b>\$ 706,490</b>	<b>\$ 573,791</b>

<sup>(1)</sup>Includes foreign residential mortgages of \$552 million at December 31, 2009 mainly from the Merrill Lynch acquisition. We did not have any material foreign residential mortgage loans prior to January 1, 2009.

<sup>(2)</sup>Includes \$13.4 billion and \$18.2 billion of pay option loans and \$1.5 billion and \$1.8 billion of subprime loans at December 31, 2009 and 2008. The Corporation no longer originates these products.

<sup>(3)</sup>Includes dealer financial services loans of \$41.6 billion, \$40.1 billion, \$37.2 billion, \$33.4 billion and \$27.7 billion; consumer lending of \$19.7 billion, \$28.2 billion, \$24.4 billion, \$16.3 billion and \$0; and foreign consumer loans of \$8.0 billion, \$1.8 billion, \$3.4 billion, \$3.9 billion and \$48 million at December 31, 2009, 2008, 2007, 2006 and 2005, respectively. The 2009 amount includes securities-based lending margin loans of \$12.9 billion.

<sup>(4)</sup>Includes consumer finance loans of \$2.3 billion, \$2.6 billion, \$3.0 billion, \$2.8 billion and \$2.8 billion and other foreign consumer loans of \$709 million, \$618 million, \$829 million, \$2.3 billion and \$3.8 billion at December 31, 2009, 2008, 2007, 2006 and 2005, respectively.

<sup>(5)</sup>Includes small business commercial – domestic loans, including card related products, of \$17.5 billion, \$19.1 billion, \$19.3 billion, \$15.2 billion and \$7.2 billion at December 31, 2009, 2008, 2007, 2006 and 2005, respectively.

<sup>(6)</sup>Includes domestic commercial real estate loans of \$66.5 billion, \$63.7 billion, \$60.2 billion, \$35.7 billion and \$35.2 billion, and foreign commercial real estate loans of \$3.0 billion, \$979 million, \$1.1 billion, \$578 million and \$585 million at December 31, 2009, 2008, 2007, 2006 and 2005, respectively.

<sup>(7)</sup>Certain commercial loans are accounted for under the fair value option and include commercial – domestic loans of \$3.0 billion, \$3.5 billion and \$3.5 billion, commercial – foreign loans of \$1.9 billion, \$1.7 billion and \$790 million, and commercial real estate loans of \$90 million, \$203 million and \$304 million at December 31, 2009, 2008 and 2007, respectively.

n/a= not applicable

**Table V Nonperforming Loans, Leases and Foreclosed Properties <sup>(1)</sup>**

(Dollars in millions)	December 31				
	2009	2008	2007	2006	2005
<b>Consumer</b>					
Residential mortgage	\$16,596	\$ 7,057	\$1,999	\$ 660	\$ 570
Home equity	3,804	2,637	1,340	289	151
Discontinued real estate	249	77	n/a	n/a	n/a
Direct/Indirect consumer	86	26	8	4	3
Other consumer	104	91	95	77	61
<b>Total consumer <sup>(2)</sup></b>	<b>20,839</b>	<b>9,888</b>	<b>3,442</b>	<b>1,030</b>	<b>785</b>
<b>Commercial</b>					
Commercial – domestic <sup>(3)</sup>	4,925	2,040	852	494	550
Commercial real estate	7,286	3,906	1,099	118	49
Commercial lease financing	115	56	33	42	62
Commercial – foreign	177	290	19	13	34
	<b>12,503</b>	<b>6,292</b>	<b>2,003</b>	<b>667</b>	<b>695</b>
Small business commercial – domestic	200	205	152	90	31
<b>Total commercial <sup>(4)</sup></b>	<b>12,703</b>	<b>6,497</b>	<b>2,155</b>	<b>757</b>	<b>726</b>
<b>Total nonperforming loans and leases</b>	<b>33,542</b>	<b>16,385</b>	<b>5,597</b>	<b>1,787</b>	<b>1,511</b>
Foreclosed properties	2,205	1,827	351	69	92
<b>Total nonperforming loans, leases and foreclosed properties <sup>(5)</sup></b>	<b>\$35,747</b>	<b>\$18,212</b>	<b>\$5,948</b>	<b>\$1,856</b>	<b>\$1,603</b>

<sup>(1)</sup>Balances do not include purchased impaired loans even though the customer may be contractually past due. Loans accounted for as purchased impaired loans were written down to fair value upon acquisition and accrete interest income over the remaining life of the loan.

<sup>(2)</sup>In 2009, \$1.4 billion in interest income was estimated to be contractually due on consumer loans and leases classified as nonperforming at December 31, 2009 provided that these loans and leases had been paying according to their terms and conditions, including troubled debt restructured loans of which \$3.0 billion were performing at December 31, 2009 and not included in the table above. Approximately \$194 million of the estimated \$1.4 billion in contractual interest was received and included in earnings for 2009.

<sup>(3)</sup>Excludes small business commercial – domestic loans.

<sup>(4)</sup>In 2009, \$450 million in interest income was estimated to be contractually due on commercial loans and leases classified as nonperforming at December 31, 2009, including troubled debt restructured loans of which \$91 million were performing at December 31, 2009 and not included in the table above. Approximately \$128 million of the estimated \$450 million in contractual interest was received and included in earnings for 2009.

<sup>(5)</sup>Balances do not include loans accounted for under the fair value option. At December 31, 2009, there were \$15 million of nonperforming loans accounted for under the fair value option. At December 31, 2009, there were \$87 million of loans or leases past due 90 days or more and still accruing interest accounted for under the fair value option.

n/a= not applicable



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**Table VI Accruing Loans and Leases Past Due 90 Days or More <sup>(1)</sup>**

(Dollars in millions)	December 31				
	2009	2008	2007	2006	2005
<b>Consumer</b>					
Residential mortgage <sup>(2)</sup>	\$11,680	\$ 372	\$ 237	\$ 118	\$ -
Credit card – domestic	2,158	2,197	1,855	1,991	1,197
Credit card – foreign	500	368	272	184	-
Direct/Indirect consumer	1,488	1,370	745	378	75
Other consumer	3	4	4	7	15
<b>Total consumer</b>	<b>15,829</b>	<b>4,311</b>	<b>3,113</b>	<b>2,678</b>	<b>1,287</b>
<b>Commercial</b>					
Commercial – domestic <sup>(3)</sup>	213	381	119	66	79
Commercial real estate	80	52	36	78	4
Commercial lease financing	32	23	25	26	15
Commercial – foreign	67	7	16	9	32
Small business commercial – domestic	392	463	196	179	130
<b>Total commercial</b>	<b>624</b>	<b>640</b>	<b>427</b>	<b>199</b>	<b>38</b>
<b>Total accruing loans and leases past due 90 days or more <sup>(4)</sup></b>	<b>\$16,845</b>	<b>\$5,414</b>	<b>\$3,736</b>	<b>\$3,056</b>	<b>\$1,455</b>

<sup>(1)</sup>Accruing loans past due 90 days or more do not include purchased impaired loans which were written down to fair value upon acquisition and accrete interest income over the remaining life of the loan.

<sup>(2)</sup>Balances represent repurchases of insured or guaranteed loans.

<sup>(3)</sup>Excludes small business commercial – domestic loans.

<sup>(4)</sup>Balances do not include loans accounted for under the fair value option. At December 31, 2009 there were \$87 million of loans past due 90 days or more and still accruing interest accounted for under the fair value option.

Table VII Allowance for Credit Losses

(Dollars in millions)	2009	2008	2007	2006	2005
<b>Allowance for loan and lease losses, January 1</b>	<b>\$ 23,071</b>	<b>\$ 11,588</b>	<b>\$ 9,016</b>	<b>\$ 8,045</b>	<b>\$ 8,626</b>
<b>Loans and leases charged off</b>					
Residential mortgage	(4,436)	(964)	(78)	(74)	(58)
Home equity	(7,205)	(3,597)	(286)	(67)	(46)
Discontinued real estate	(104)	(19)	n/a	n/a	n/a
Credit card – domestic	(6,753)	(4,469)	(3,410)	(3,546)	(4,018)
Credit card – foreign	(1,332)	(639)	(453)	(292)	–
Direct/Indirect consumer	(6,406)	(3,777)	(1,885)	(857)	(380)
Other consumer	(491)	(461)	(346)	(327)	(376)
<b>Total consumer charge-offs</b>	<b>(26,727)</b>	<b>(13,926)</b>	<b>(6,458)</b>	<b>(5,163)</b>	<b>(4,878)</b>
Commercial – domestic <sup>(1)</sup>	(5,237)	(2,567)	(1,135)	(597)	(535)
Commercial real estate	(2,744)	(895)	(54)	(7)	(5)
Commercial lease financing	(217)	(79)	(55)	(28)	(315)
Commercial – foreign	(558)	(199)	(28)	(86)	(61)
<b>Total commercial charge-offs</b>	<b>(8,756)</b>	<b>(3,740)</b>	<b>(1,272)</b>	<b>(718)</b>	<b>(916)</b>
<b>Total loans and leases charged off</b>	<b>(35,483)</b>	<b>(17,666)</b>	<b>(7,730)</b>	<b>(5,881)</b>	<b>(5,794)</b>
<b>Recoveries of loans and leases previously charged off</b>					
Residential mortgage	86	39	22	35	31
Home equity	155	101	12	16	15
Discontinued real estate	3	3	n/a	n/a	n/a
Credit card – domestic	206	308	347	452	366
Credit card – foreign	93	88	74	67	–
Direct/Indirect consumer	943	663	512	247	132
Other consumer	63	62	68	110	101
<b>Total consumer recoveries</b>	<b>1,549</b>	<b>1,264</b>	<b>1,035</b>	<b>927</b>	<b>645</b>
Commercial – domestic <sup>(2)</sup>	161	118	128	261	365
Commercial real estate	42	8	7	4	5
Commercial lease financing	22	19	53	56	84
Commercial – foreign	21	26	27	94	133
<b>Total commercial recoveries</b>	<b>246</b>	<b>171</b>	<b>215</b>	<b>415</b>	<b>587</b>
<b>Total recoveries of loans and leases previously charged off</b>	<b>1,795</b>	<b>1,435</b>	<b>1,250</b>	<b>1,342</b>	<b>1,232</b>
<b>Net charge-offs</b>	<b>(33,688)</b>	<b>(16,231)</b>	<b>(6,480)</b>	<b>(4,539)</b>	<b>(4,562)</b>
Provision for loan and lease losses	48,366	26,922	8,357	5,001	4,021
Write-downs on consumer purchased impaired loans <sup>(3)</sup>	(179)	n/a	n/a	n/a	n/a
Other <sup>(4)</sup>	(370)	792	695	509	(40)
<b>Allowance for loan and lease losses, December 31</b>	<b>37,200</b>	<b>23,071</b>	<b>11,588</b>	<b>9,016</b>	<b>8,045</b>
<b>Reserve for unfunded lending commitments, January 1</b>	<b>421</b>	<b>518</b>	<b>397</b>	<b>395</b>	<b>402</b>
Provision for unfunded lending commitments	204	(97)	28	9	(7)
Other <sup>(5)</sup>	862	–	93	(7)	–
<b>Reserve for unfunded lending commitments, December 31</b>	<b>1,487</b>	<b>421</b>	<b>518</b>	<b>397</b>	<b>395</b>
<b>Allowance for credit losses, December 31</b>	<b>\$ 38,687</b>	<b>\$ 23,492</b>	<b>\$ 12,106</b>	<b>\$ 9,413</b>	<b>\$ 8,440</b>
Loans and leases outstanding at December 31 <sup>(6)</sup>	<b>\$895,192</b>	<b>\$926,033</b>	<b>\$871,754</b>	<b>\$706,490</b>	<b>\$573,791</b>
Allowance for loan and lease losses as a percentage of total loans and leases outstanding at December 31 <sup>(3, 6)</sup>	<b>4.16%</b>	<b>2.49%</b>	<b>1.33%</b>	<b>1.28%</b>	<b>1.40%</b>
Consumer allowance for loan and lease losses as a percentage of total consumer loans and leases outstanding at December 31 <sup>(3)</sup>	<b>4.81</b>	<b>2.83</b>	<b>1.23</b>	<b>1.19</b>	<b>1.27</b>
Commercial allowance for loan and lease losses as a percentage of total commercial loans and leases outstanding at December 31 <sup>(3)</sup>	<b>2.96</b>	<b>1.90</b>	<b>1.51</b>	<b>1.44</b>	<b>1.62</b>
Average loans and leases outstanding <sup>(3, 6)</sup>	<b>\$941,862</b>	<b>\$905,944</b>	<b>\$773,142</b>	<b>\$652,417</b>	<b>\$537,218</b>
Net charge-offs as a percentage of average loans and leases outstanding <sup>(3, 6)</sup>	<b>3.58%</b>	<b>1.79%</b>	<b>0.84%</b>	<b>0.70%</b>	<b>0.85%</b>
Allowance for loan and lease losses as a percentage of total nonperforming loans and leases at December 31 <sup>(3, 6)</sup>	<b>111</b>	<b>141</b>	<b>207</b>	<b>505</b>	<b>532</b>
Ratio of the allowance for loan and lease losses at December 31 to net charge-offs <sup>(3)</sup>	<b>1.10</b>	<b>1.42</b>	<b>1.79</b>	<b>1.99</b>	<b>1.76</b>

<sup>(1)</sup>Includes small business commercial – domestic charge-offs of \$3.0 billion, \$2.0 billion, \$931 million and \$424 million in 2009, 2008, 2007 and 2006, respectively. Small business commercial – domestic charge offs were not material in 2005.

<sup>(2)</sup>Includes small business commercial – domestic recoveries of \$65 million, \$39 million, \$51 million and \$54 million in 2009, 2008, 2007 and 2006, respectively. Small business commercial – domestic recoveries were not material in 2005.

<sup>(3)</sup>Allowance for loan and lease losses includes \$3.9 billion and \$750 million of valuation allowance for consumer purchased impaired loans at December 31, 2009 and 2008. Excluding the valuation allowance for purchased impaired loans, allowance for loan and lease losses as a percentage of total nonperforming loans and leases would have been 99 percent and 136 percent at December 31, 2009 and 2008. For more information on the impact of purchased impaired loans on asset quality statistics, see Consumer Portfolio Credit Risk Management beginning on page 54 and Commercial Portfolio Credit Risk Management beginning on page 64.

<sup>(4)</sup>The 2009 amount includes a \$750 million reduction in the allowance for loan and lease losses related to credit card loans of \$8.5 billion which were exchanged for a \$7.8 billion held-to-maturity debt security that was issued by the Corporation's U.S. Credit Card Securitization Trust and retained by the Corporation. This reduction was partially offset by a \$340 million increase associated with the reclassification to other assets of the December 31, 2008 amount expected to be reimbursed under residential mortgage cash collateralized synthetic securitizations. The 2008 amount includes the \$1.2 billion addition of the Countrywide allowance for loan losses as of July 1, 2008. The 2007 amount includes the \$725 million and \$25 million additions of the LaSalle and U.S. Trust Corporation allowance for loan losses as of October 1, 2007 and July 1, 2007 and a reduction of \$32 million for the adjustment from the adoption of the fair value option accounting guidance. The 2006 amount includes the \$577 billion addition of the MBNA Corporation allowance for loan losses as of January 1, 2006.

<sup>(5)</sup>The 2009 amount represents the fair value of the acquired Merrill Lynch unfunded lending commitments excluding those accounted for under the fair value option, net of accretion and the impact of funding previously unfunded positions. The 2007 amount includes the \$124 million addition of the LaSalle reserve for unfunded lending commitments as of October 1, 2007 and a \$28 million reduction for the adjustment from the adoption of the fair value option accounting guidance.

<sup>(6)</sup>Outstanding loan and lease balances and ratios do not include loans accounted for under the fair value option at and for the years ended December 31, 2009, 2008 and 2007. Loans measured at fair value were \$4.9 billion, \$5.4 billion and \$4.6 billion at December 31, 2009, 2008 and 2007, respectively. Average loans accounted for under the fair value option were \$6.9 billion, \$4.9 billion and \$3.0 billion for 2009, 2008 and 2007, respectively.

n/a = not applicable

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

(Dollars in millions)	December 31									
	2009		2008		2007		2006		2005	
	Amount	Percent of Total	Amount	Percent of Total	Amount	Percent of Total	Amount	Percent of Total	Amount	Percent of Total
<b>Allowance for loan and lease losses</b>										
Residential mortgage	\$ 4,607	12.38%	\$ 1,382	5.99%	\$ 207	1.79%	\$ 248	2.75%	\$ 277	3.44%
Home equity	10,160	27.31	5,385	23.34	963	8.31	133	1.48	136	1.69
Discontinued real estate	989	2.66	658	2.85	n/a	n/a	n/a	n/a	n/a	n/a
Credit card – domestic	6,017	16.18	3,947	17.11	2,919	25.19	3,176	35.23	3,301	41.03
Credit card – foreign	1,581	4.25	742	3.22	441	3.81	336	3.73	-	-
Direct/Indirect consumer	4,227	11.36	4,341	18.81	2,077	17.92	1,378	15.28	421	5.23
Other consumer	204	0.55	203	0.88	151	1.30	289	3.20	380	4.73
<b>Total consumer</b>	<b>27,785</b>	<b>74.69</b>	<b>16,658</b>	<b>72.20</b>	<b>6,758</b>	<b>58.32</b>	<b>5,560</b>	<b>61.67</b>	<b>4,515</b>	<b>56.12</b>
Commercial – domestic <sup>(1)</sup>	5,152	13.85	4,339	18.81	3,194	27.56	2,162	23.98	2,100	26.10
Commercial real estate	3,567	9.59	1,465	6.35	1,083	9.35	588	6.52	609	7.57
Commercial lease financing	291	0.78	223	0.97	218	1.88	217	2.41	232	2.89
Commercial – foreign	405	1.09	386	1.67	335	2.89	489	5.42	589	7.32
<b>Total commercial <sup>(2)</sup></b>	<b>9,415</b>	<b>25.31</b>	<b>6,413</b>	<b>27.80</b>	<b>4,830</b>	<b>41.68</b>	<b>3,456</b>	<b>38.33</b>	<b>3,530</b>	<b>43.88</b>
<b>Allowance for loan and lease losses</b>	<b>37,200</b>	<b>100.00%</b>	<b>23,071</b>	<b>100.00%</b>	<b>11,588</b>	<b>100.00%</b>	<b>9,016</b>	<b>100.00%</b>	<b>8,045</b>	<b>100.00%</b>
<b>Reserve for unfunded lending commitments <sup>(3)</sup></b>	<b>1,487</b>		<b>421</b>		<b>518</b>		<b>397</b>		<b>395</b>	
<b>Allowance for credit losses <sup>(4)</sup></b>	<b>\$ 38,687</b>		<b>\$ 23,492</b>		<b>\$ 12,106</b>		<b>\$ 9,413</b>		<b>\$ 8,440</b>	

<sup>(1)</sup>Includes allowance for small business commercial – domestic loans of \$2.4 billion, \$2.4 billion, \$1.4 billion and \$578 million at December 31, 2009, 2008, 2007 and 2006, respectively. The allowance for small business commercial – domestic loans was not material in 2005.

<sup>(2)</sup>Includes allowance for loan and lease losses for impaired commercial loans of \$1.2 billion, \$691 million, \$123 million, \$43 million and \$55 million at December 31, 2009, 2008, 2007, 2006 and 2005, respectively.

<sup>(3)</sup>Amounts for 2009 include the Merrill Lynch acquisition. The majority of the increase from December 31, 2008 relates to the fair value of the acquired Merrill Lynch unfunded lending commitments, excluding commitments accounted for under the fair value option.

<sup>(4)</sup>Includes \$3.9 billion and \$750 million related to purchased impaired loans at December 31, 2009 and 2008.

n/a = not applicable

**Table IX Selected Loan Maturity Data <sup>(1,2)</sup>**

(Dollars in millions)	December 31, 2009			
	Due in One Year or Less	Due After One Year Through Five Years	Due After Five Years	Total
Commercial – domestic	\$ 69,112	\$ 90,528	\$ 42,239	\$ 201,879
Commercial real estate – domestic	30,926	26,463	9,154	66,543
Foreign and other <sup>(3)</sup>	25,157	8,361	262	33,780
<b>Total selected loans</b>	<b>\$ 125,195</b>	<b>\$ 125,352</b>	<b>\$ 51,655</b>	<b>\$ 302,202</b>
Percent of total	41.4%	41.5%	17.1%	100.0%
Sensitivity of selected loans to changes in interest rates for loans due after one year:				
Fixed interest rates		\$ 12,612	\$ 28,247	
Floating or adjustable interest rates		112,740	23,408	
<b>Total</b>		<b>\$ 125,352</b>	<b>\$ 51,655</b>	

<sup>(1)</sup>Loan maturities are based on the remaining maturities under contractual terms.

<sup>(2)</sup>Includes loans accounted for under the fair value option.

<sup>(3)</sup>Loan maturities include other consumer, commercial real estate and commercial – foreign loans.

[Table of Contents](#)**Table X Non-exchange Traded Commodity Contracts**

	December 31, 2009	
	Asset Positions	Liability Positions
(Dollars in millions)		
Net fair value of contracts outstanding, January 1, 2009	\$ 9,433	\$ 6,726
Effects of legally enforceable master netting agreements	30,021	30,021
Gross fair value of contracts outstanding, January 1, 2009	39,454	36,747
Contracts realized or otherwise settled	(19,654)	(18,623)
Fair value of new contracts	9,231	9,284
Other changes in fair value	(6,210)	(5,865)
Gross fair value of contracts outstanding, December 31, 2009	22,821	21,543
Effects of legally enforceable master netting agreements	(17,785)	(17,785)
<b>Net fair value of contracts outstanding, December 31, 2009</b>	<b>\$ 5,036</b>	<b>\$ 3,758</b>

**Table XI Non-exchange Traded Commodity Contract Maturities**

	December 31, 2009	
	Asset Positions	Liability Positions
(Dollars in millions)		
Maturity of less than 1 year	\$ 16,161	\$ 15,431
Maturity of 1-3 years	4,603	4,295
Maturity of 4-5 years	774	542
Maturity in excess of 5 years	1,283	1,275
Gross fair value of contracts outstanding	22,821	21,543
Effects of legally enforceable master netting agreements	(17,785)	(17,785)
<b>Net fair value of contracts outstanding</b>	<b>\$ 5,036</b>	<b>\$ 3,758</b>

**Table XII Selected Quarterly Financial Data**

(Dollars in millions, except per share information)	2009 Quarters				2008 Quarters			
	Fourth	Third	Second	First	Fourth	Third	Second	First
<b>Income statement</b>								
Net interest income	\$ 11,559	\$ 11,423	\$ 11,630	\$ 12,497	\$ 13,106	\$ 11,642	\$ 10,621	\$ 9,991
Noninterest income	13,517	14,612	21,144	23,261	2,574	7,979	9,789	7,080
Total revenue, net of interest expense	25,076	26,035	32,774	35,758	15,680	19,621	20,410	17,071
Provision for credit losses	10,110	11,705	13,375	13,380	8,535	6,450	5,830	6,010
Noninterest expense, before merger and restructuring charges	15,852	15,712	16,191	16,237	10,641	11,413	9,447	9,093
Merger and restructuring charges	533	594	829	765	306	247	212	170
Income (loss) before income taxes	(1,419)	(1,976)	2,379	5,376	(3,802)	1,511	4,921	1,798
Income tax expense (benefit)	(1,225)	(975)	(845)	1,129	(2,013)	334	1,511	588
Net income (loss)	(194)	(1,001)	3,224	4,247	(1,789)	1,177	3,410	1,210
Net income (loss) applicable to common shareholders	(5,196)	(2,241)	2,419	2,814	(2,392)	704	3,224	1,020
Average common shares issued and outstanding (in thousands)	8,634,565	8,633,834	7,241,515	6,370,815	4,957,049	4,543,963	4,435,719	4,427,823
Average diluted common shares issued and outstanding (in thousands)	8,634,565	8,633,834	7,269,518	6,431,027	4,957,049	4,547,578	4,444,098	4,461,201
<b>Performance ratios</b>								
Return on average assets	n/m	n/m	0.53%	0.68%	n/m	0.25%	0.78%	0.28%
Return on average common shareholders' equity	n/m	n/m	5.59	7.10	n/m	1.97	9.25	2.90
Return on average tangible common shareholders' equity <sup>(1)</sup>	n/m	n/m	12.68	16.15	n/m	5.34	23.78	7.37
Return on average tangible shareholders' equity <sup>(1)</sup>	n/m	n/m	8.86	12.42	n/m	6.11	18.12	7.06
Total ending equity to total ending assets	10.41%	11.45%	11.32	10.32	9.74%	8.79	9.48	9.00
Total average equity to total average assets	10.35	10.71	10.03	9.08	9.06	8.73	9.20	8.77
Dividend payout	n/m	n/m	3.56	2.28	n/m	n/m	88.67	n/m
<b>Per common share data</b>								
Earnings (loss)	\$ (0.60)	\$ (0.26)	\$ 0.33	\$ 0.44	\$ (0.48)	\$ 0.15	\$ 0.72	\$ 0.23
Diluted earnings (loss)	(0.60)	(0.26)	0.33	0.44	(0.48)	0.15	0.72	0.23
Dividends paid	0.01	0.01	0.01	0.01	0.32	0.64	0.64	0.64
Book value	21.48	22.99	22.71	25.98	27.77	30.01	31.11	31.22
Tangible book value <sup>(1)</sup>	11.94	12.00	11.66	10.88	10.11	10.50	11.87	11.90
<b>Market price per share of common stock</b>								
Closing	\$ 15.06	\$ 16.92	\$ 13.20	\$ 6.82	\$ 14.08	\$ 35.00	\$ 23.87	\$ 37.91
High closing	18.59	17.98	14.17	14.33	38.13	37.48	40.86	45.03
Low closing	14.58	11.84	7.05	3.14	11.25	18.52	23.87	35.31
<b>Market capitalization</b>								
	\$ 130,273	\$ 146,363	\$ 114,199	\$ 43,654	\$ 70,645	\$ 159,672	\$ 106,292	\$ 168,806
<b>Average balance sheet</b>								
Total loans and leases	\$ 905,913	\$ 930,255	\$ 966,105	\$ 994,121	\$ 941,563	\$ 946,914	\$ 878,639	\$ 875,661
Total assets	2,421,531	2,390,675	2,420,317	2,519,134	1,948,854	1,905,691	1,754,613	1,764,927
Total deposits	995,160	989,295	974,892	964,081	892,141	857,845	786,002	787,623
Long-term debt	445,440	449,974	444,131	446,975	255,709	264,934	205,194	198,463
Common shareholders' equity	197,123	197,230	173,497	160,739	142,535	142,303	140,243	141,456
Total shareholders' equity	250,599	255,983	242,867	228,766	176,566	166,454	161,428	154,728
<b>Asset quality <sup>(2)</sup></b>								
Allowance for credit losses <sup>(3)</sup>	\$ 38,687	\$ 37,399	\$ 35,777	\$ 31,150	\$ 23,492	\$ 20,773	\$ 17,637	\$ 15,398
Nonperforming loans, leases and foreclosed properties <sup>(4)</sup>	35,747	33,825	30,982	25,632	18,212	13,576	9,749	7,827
Allowance for loan and lease losses as a percentage of total loans and leases outstanding <sup>(4)</sup>	4.16%	3.95%	3.61%	3.00%	2.49%	2.17%	1.98%	1.71%
Allowance for loan and lease losses as a percentage of total nonperforming loans and leases <sup>(4)</sup>	111	112	116	122	141	173	187	203
Net charge-offs	\$ 8,421	\$ 9,624	\$ 8,701	\$ 6,942	\$ 5,541	\$ 4,356	\$ 3,619	\$ 2,715
Annualized net charge-offs as a percentage of average loans and leases outstanding <sup>(4)</sup>	3.71%	4.13%	3.64%	2.85%	2.36%	1.84%	1.67%	1.25%
Nonperforming loans and leases as a percentage of total loans and leases outstanding <sup>(4)</sup>	3.75	3.51	3.12	2.47	1.77	1.25	1.06	0.84
Nonperforming loans, leases and foreclosed properties as a percentage of total loans, leases and foreclosed properties <sup>(4)</sup>	3.98	3.72	3.31	2.64	1.96	1.45	1.13	0.90
Ratio of the allowance for loan and lease losses at period end to annualized net charge-offs	1.11	0.94	0.97	1.03	1.05	1.17	1.18	1.36
<b>Capital ratios (period end)</b>								
<b>Risk-based capital:</b>								
Tier 1 common	7.81%	7.25%	6.90%	4.49%	4.80%	4.23%	4.78%	4.64%
Tier 1	10.40	12.46	11.93	10.09	9.15	7.55	8.25	7.51
Total	14.66	16.69	15.99	14.03	13.00	11.54	12.60	11.71
Tier 1 leverage	6.91	8.39	8.21	7.07	6.44	5.51	6.07	5.59
Tangible equity <sup>(1)</sup>	6.42	7.55	7.39	6.42	5.11	4.13	4.72	4.26
Tangible common equity <sup>(1)</sup>	5.57	4.82	4.67	3.13	2.93	2.75	3.24	3.21

<sup>(1)</sup>Tangible equity ratios and tangible book value per share of common stock are non-GAAP measures. Other companies may define or calculate these measures differently. For additional information on these ratios and a corresponding reconciliation to GAAP financial measures, see Supplemental Financial Data beginning on page 25.

<sup>(2)</sup>For more information on the impact of purchased impaired loans on asset quality statistics, see Consumer Portfolio Credit Risk Management beginning on page 54 and Commercial Portfolio Credit Risk Management beginning on page 64.

<sup>(3)</sup>Includes the allowance for loan and lease losses and the reserve for unfunded lending commitments.

<sup>(4)</sup>Balances and ratios do not include loans accounted for under the fair value option.

n/m = not meaningful

Table XIII Quarterly Average Balances and Interest Rates – FTE Basis

	Fourth Quarter 2009			Third Quarter 2009		
	Average Balance	Interest Income/Expense	Yield/Rate	Average Balance	Interest Income/Expense	Yield/Rate
(Dollars in millions)						
<b>Earning assets</b>						
Time deposits placed and other short-term investments	\$ 28,566	\$ 220	3.06%	\$ 29,485	\$ 133	1.79%
Federal funds sold and securities borrowed or purchased under agreements to resell	244,914	327	0.53	223,039	722	1.28
Trading account assets	218,787	1,800	3.28	212,488	1,909	3.58
Debt securities <sup>(1)</sup>	279,231	2,921	4.18	263,712	3,048	4.62
Loans and leases <sup>(2)</sup> :						
Residential mortgage <sup>(3)</sup>	236,883	3,108	5.24	241,924	3,258	5.38
Home equity	150,704	1,613	4.26	153,269	1,614	4.19
Discontinued real estate	15,152	174	4.58	16,570	219	5.30
Credit card – domestic	49,213	1,336	10.77	49,751	1,349	10.76
Credit card – foreign	21,680	605	11.08	21,189	562	10.52
Direct/Indirect consumer <sup>(4)</sup>	98,938	1,361	5.46	100,012	1,439	5.71
Other consumer <sup>(5)</sup>	3,177	50	6.33	3,331	60	7.02
Total consumer	575,747	8,247	5.70	586,046	8,501	5.77
Commercial – domestic	207,050	2,090	4.01	216,332	2,132	3.91
Commercial real estate <sup>(6)</sup>	71,352	595	3.31	74,276	600	3.20
Commercial lease financing	21,769	273	5.04	22,068	178	3.22
Commercial – foreign	29,995	287	3.78	31,533	297	3.74
Total commercial	330,166	3,245	3.90	344,209	3,207	3.70
Total loans and leases	905,913	11,492	5.05	930,255	11,708	5.01
Other earning assets	130,487	1,222	3.72	131,021	1,333	4.05
<b>Total earning assets <sup>(7)</sup></b>	<b>1,807,898</b>	<b>17,982</b>	<b>3.96</b>	<b>1,790,000</b>	<b>18,853</b>	<b>4.19</b>
Cash and cash equivalents	230,618			196,116		
Other assets, less allowance for loan and lease losses	383,015			404,559		
<b>Total assets</b>	<b>\$2,421,531</b>			<b>\$2,390,675</b>		
<b>Interest-bearing liabilities</b>						
Domestic interest-bearing deposits:						
Savings	\$ 33,749	\$ 54	0.63%	\$ 34,170	\$ 49	0.57%
NOW and money market deposit accounts	392,212	388	0.39	356,873	353	0.39
Consumer CDs and IRAs	192,779	835	1.72	214,284	1,100	2.04
Negotiable CDs, public funds and other time deposits	31,758	82	1.04	48,905	118	0.95
Total domestic interest-bearing deposits	650,498	1,359	0.83	654,232	1,620	0.98
Foreign interest-bearing deposits:						
Banks located in foreign countries	16,477	30	0.73	15,941	29	0.73
Governments and official institutions	6,650	4	0.23	6,488	4	0.23
Time, savings and other	54,469	79	0.57	53,013	57	0.42
Total foreign interest-bearing deposits	77,596	113	0.58	75,442	90	0.47
Total interest-bearing deposits	728,094	1,472	0.80	729,674	1,710	0.93
Federal funds purchased, securities loaned or sold under agreements to repurchase and other short-term borrowings	450,538	658	0.58	411,063	1,237	1.19
Trading account liabilities	83,118	591	2.82	73,290	455	2.46
Long-term debt	445,440	3,365	3.01	449,974	3,698	3.27
<b>Total interest-bearing liabilities <sup>(7)</sup></b>	<b>1,707,190</b>	<b>6,086</b>	<b>1.42</b>	<b>1,664,001</b>	<b>7,100</b>	<b>1.70</b>
Noninterest-bearing sources:						
Noninterest-bearing deposits	267,066			259,621		
Other liabilities	196,676			211,070		
Shareholders' equity	250,599			255,983		
<b>Total liabilities and shareholders' equity</b>	<b>\$2,421,531</b>			<b>\$2,390,675</b>		
Net interest spread			2.54%			2.49%
Impact of noninterest-bearing sources			0.08			0.12
<b>Net interest income/yield on earning assets</b>		<b>\$ 11,896</b>	<b>2.62%</b>		<b>\$ 11,753</b>	<b>2.61%</b>

<sup>(1)</sup>Yields on AFS debt securities are calculated based on fair value rather than the cost basis. The use of fair value does not have a material impact on net interest yield.

<sup>(2)</sup>Nonperforming loans are included in the respective average loan balances. Income on these nonperforming loans is recognized on a cash basis. Purchased impaired loans were written down to fair value upon acquisition and accrete interest income over the remaining life of the loan.

<sup>(3)</sup>Includes foreign residential mortgage loans of \$550 million, \$662 million, \$650 million and \$627 million for the fourth, third, second and first quarters of 2009, respectively.

<sup>(4)</sup>Includes foreign consumer loans of \$8.6 billion, \$8.4 billion, \$8.0 billion and \$7.1 billion in the fourth, third, second and first quarters of 2009, respectively, and \$2.0 billion in the fourth quarter of 2008.

<sup>(5)</sup>Includes consumer finance loans of \$2.3 billion, \$2.4 billion, \$2.5 billion and \$2.6 billion in the fourth, third, second and first quarters of 2009, respectively, and \$2.7 billion in the fourth quarter of 2008; and other foreign consumer loans of \$689 million, \$700 million, \$640 million and \$596 million in the fourth, third, second and first quarters of 2009, respectively, and \$654 million in the fourth quarter of 2008.

<sup>(6)</sup>Includes domestic commercial real estate loans of \$68.2 billion, \$70.7 billion, \$72.8 billion and \$70.9 billion in the fourth, third, second and first quarters of 2009, respectively, and \$63.6 billion in the fourth quarter of 2008; and foreign commercial real estate loans of \$3.1 billion, \$3.6 billion, \$2.8 billion and \$1.3 billion in the fourth, third, second and first quarters of 2009, respectively, and \$964 million in the fourth quarter of 2008.

<sup>(7)</sup>Interest income includes the impact of interest rate risk management contracts, which decreased interest income on assets \$248 million, \$136 million, \$11 million and \$61 million in the fourth, third, second and first quarters of 2009, respectively, and \$41 million in the fourth quarter of 2008. Interest expense includes the impact of interest rate risk management contracts, which increased (decreased) interest expense on liabilities \$(1.1) billion, \$(873) million, \$(550) million and \$(512) million in the fourth, third, second and first quarters of 2009, respectively, and \$237 million in the fourth quarter of 2008. For further information on interest rate contracts, see Interest Rate Risk Management for Nontrading Activities beginning on page 83.

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**Quarterly Average Balances and Interest Rates – FTE Basis (continued)**

	Second Quarter 2009			First Quarter 2009			Fourth Quarter 2008		
	Average Balance	Interest Income/Expense	Yield/Rate	Average Balance	Interest Income/Expense	Yield/Rate	Average Balance	Interest Income/Expense	Yield/Rate
(Dollars in millions)									
<b>Earning assets</b>									
Time deposits placed and other short-term investments	\$ 25,604	\$ 169	2.64%	\$ 26,158	\$ 191	2.96%	\$ 10,511	\$ 158	5.97%
Federal funds sold and securities borrowed or purchased under agreements to resell	230,955	690	1.20	244,280	1,155	1.90	104,843	393	1.50
Trading account assets	199,820	2,028	4.07	237,350	2,499	4.24	179,687	2,170	4.82
Debt securities <sup>(1)</sup>	255,159	3,353	5.26	286,249	3,902	5.47	280,942	3,913	5.57
Loans and leases <sup>(2)</sup> :									
Residential mortgage <sup>(3)</sup>	253,803	3,489	5.50	265,121	3,680	5.57	253,560	3,596	5.67
Home equity	156,599	1,722	4.41	158,575	1,787	4.55	151,943	1,954	5.12
Discontinued real estate	18,309	303	6.61	19,386	386	7.97	21,324	459	8.60
Credit card – domestic	51,721	1,380	10.70	58,960	1,601	11.01	64,906	1,784	10.94
Credit card – foreign	18,825	501	10.66	16,858	454	10.94	17,211	521	12.05
Direct/Indirect consumer <sup>(4)</sup>	100,302	1,532	6.12	100,741	1,684	6.78	83,331	1,714	8.18
Other consumer <sup>(5)</sup>	3,298	63	7.77	3,408	64	7.50	3,544	70	7.83
<b>Total consumer</b>	<b>602,857</b>	<b>8,990</b>	<b>5.97</b>	<b>623,049</b>	<b>9,656</b>	<b>6.25</b>	<b>595,819</b>	<b>10,098</b>	<b>6.76</b>
Commercial – domestic	231,639	2,176	3.77	240,683	2,485	4.18	226,095	2,890	5.09
Commercial real estate <sup>(6)</sup>	75,559	627	3.33	72,206	550	3.09	64,586	706	4.35
Commercial lease financing	22,026	260	4.72	22,056	279	5.05	22,069	242	4.40
Commercial – foreign	34,024	360	4.24	36,127	462	5.18	32,994	373	4.49
<b>Total commercial</b>	<b>363,248</b>	<b>3,423</b>	<b>3.78</b>	<b>371,072</b>	<b>3,776</b>	<b>4.12</b>	<b>345,744</b>	<b>4,211</b>	<b>4.85</b>
<b>Total loans and leases</b>	<b>966,105</b>	<b>12,413</b>	<b>5.15</b>	<b>994,121</b>	<b>13,432</b>	<b>5.46</b>	<b>941,563</b>	<b>14,309</b>	<b>6.06</b>
Other earning assets	134,338	1,251	3.73	124,325	1,299	4.22	99,127	959	3.85
<b>Total earning assets <sup>(7)</sup></b>	<b>1,811,981</b>	<b>19,904</b>	<b>4.40</b>	<b>1,912,483</b>	<b>22,478</b>	<b>4.74</b>	<b>1,616,673</b>	<b>21,902</b>	<b>5.40</b>
Cash and cash equivalents	204,354			153,007			77,388		
Other assets, less allowance for loan and lease losses	403,982			453,644			254,793		
<b>Total assets</b>	<b>\$2,420,317</b>			<b>\$2,519,134</b>			<b>\$1,948,854</b>		
<b>Interest-bearing liabilities</b>									
Domestic interest-bearing deposits:									
Savings	\$ 34,367	\$ 54	0.63%	\$ 32,378	\$ 58	0.72%	\$ 31,561	\$ 58	0.73%
NOW and money market deposit accounts	342,570	376	0.44	343,215	440	0.52	285,410	813	1.13
Consumer CDs and IRAs	229,392	1,409	2.46	235,787	1,710	2.93	229,410	1,835	3.18
Negotiable CDs, public funds and other time deposits	39,100	124	1.28	31,188	149	1.94	36,510	270	2.94
<b>Total domestic interest-bearing deposits</b>	<b>645,429</b>	<b>1,963</b>	<b>1.22</b>	<b>642,568</b>	<b>2,357</b>	<b>1.49</b>	<b>582,891</b>	<b>2,976</b>	<b>2.03</b>
Foreign interest-bearing deposits:									
Banks located in foreign countries	19,261	37	0.76	26,052	48	0.75	41,398	125	1.20
Governments and official institutions	7,379	4	0.22	9,849	6	0.25	13,738	30	0.87
Time, savings and other	54,307	78	0.58	58,380	132	0.92	48,836	165	1.34
<b>Total foreign interest-bearing deposits</b>	<b>80,947</b>	<b>119</b>	<b>0.59</b>	<b>94,281</b>	<b>186</b>	<b>0.80</b>	<b>103,972</b>	<b>320</b>	<b>1.22</b>
<b>Total interest-bearing deposits</b>	<b>726,376</b>	<b>2,082</b>	<b>1.15</b>	<b>736,849</b>	<b>2,543</b>	<b>1.40</b>	<b>686,863</b>	<b>3,296</b>	<b>1.91</b>
Federal funds purchased, securities loaned or sold under agreements to repurchase and other short-term borrowings									
	503,451	1,396	1.11	591,928	2,221	1.52	459,743	1,910	1.65
Trading account liabilities	62,778	450	2.87	69,481	579	3.38	65,058	524	3.20
Long-term debt	444,131	4,034	3.64	446,975	4,316	3.89	255,709	2,766	4.32
<b>Total interest-bearing liabilities <sup>(7)</sup></b>	<b>1,736,736</b>	<b>7,962</b>	<b>1.84</b>	<b>1,845,233</b>	<b>9,659</b>	<b>2.11</b>	<b>1,467,373</b>	<b>8,496</b>	<b>2.30</b>
Noninterest-bearing sources:									
Noninterest-bearing deposits	248,516			227,232			205,278		
Other liabilities	192,198			217,903			99,637		
Shareholders' equity	242,867			228,766			176,566		
<b>Total liabilities and shareholders' equity</b>	<b>\$2,420,317</b>			<b>\$2,519,134</b>			<b>\$1,948,854</b>		
Net interest spread			2.56%			2.63%			3.10%
Impact of noninterest-bearing sources			0.08			0.07			0.21
<b>Net interest income/yield on earning assets</b>		<b>\$ 11,942</b>	<b>2.64%</b>		<b>\$ 12,819</b>	<b>2.70%</b>		<b>\$ 13,406</b>	<b>3.31%</b>

For Footnotes, see page 106.

## Glossary

**Alt-A Mortgage** – Alternative-A mortgage, a type of U.S. mortgage that, for various reasons, is considered riskier than A-paper, or “prime”, and less risky than “subprime,” the riskiest category. Alt-A interest rates, which are determined by credit risk, therefore tend to be between those of prime and subprime home loans. Typically, Alt-A mortgages are characterized by borrowers with less than full documentation, lower credit scores and higher LTVs.

**Asset-Backed Commercial Paper Money Market Fund Liquidity Facility (AMLF)** – A lending program created by the Federal Reserve on September 19, 2008 that provides nonrecourse loans to U.S. financial institutions for the purchase of U.S. dollar-denominated high-quality asset-backed commercial paper from money market mutual funds under certain conditions. This program is intended to assist money market funds that hold such paper in meeting demands for redemptions by investors and to foster liquidity in the asset-backed commercial paper market and money markets more generally. Financial institutions generally bear no credit risk associated with commercial paper purchased under the AMLF.

**Assets in Custody** – Consist largely of custodial and non-discretionary trust assets excluding brokerage assets administered for customers. Trust assets encompass a broad range of asset types including real estate, private company ownership interest, personal property and investments.

**Assets Under Management (AUM)** – The total market value of assets under the investment advisory and discretion of *GWIM* which generate asset management fees based on a percentage of the assets’ market values. AUM reflect assets that are generally managed for institutional, high net-worth and retail clients and are distributed through various investment products including mutual funds, other commingled vehicles and separate accounts.

**At-the-market Offering** – A form of equity issuance where an exchange-listed company incrementally sells newly issued shares into the market through a designated broker/dealer at prevailing market prices, rather than via a traditional underwritten offering of a fixed number of shares at a fixed price all at once.

**Bridge Financing** – A loan or security that is expected to be replaced by permanent financing (debt or equity securities, loan syndication or asset sales) prior to the maturity date of the loan. Bridge loans may include an unfunded commitment, as well as funded amounts, and are generally expected to be retired in one year or less.

**CDO-squared** – A type of CDO where the underlying collateral includes tranches of other CDOs.

**Client Brokerage Assets** – Include client assets which are held in brokerage accounts. This includes non-discretionary brokerage and fee-based assets which generate brokerage income and asset management fee revenue.

**Client Deposits** – Includes *GWIM* client deposit accounts representing both consumer and commercial demand, regular savings, time, money market, sweep and foreign accounts.

**Committed Credit Exposure** – Includes any funded portion of a facility plus the unfunded portion of a facility on which the lender is legally bound to advance funds during a specified period under prescribed conditions.

**Core Net Interest Income – Managed Basis** – Net interest income on a fully taxable-equivalent basis excluding the impact of market-based activities and certain securitizations.

**Credit Default Swap (CDS)** – A derivative contract that provides protection against the deterioration of credit quality and allows one party to receive payment in the event of default by a third party under a borrowing arrangement.

**Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act)** – Legislation signed into law on May 22, 2009 to provide changes to credit card industry practices including significantly restricting credit card issuers’ ability to change interest rates and assess fees to reflect individual consumer risk, change the way payments are applied and requiring changes to consumer credit card disclosures. The majority of the provisions became effective in February 2010.

**Derivative** – A contract or agreement whose value is derived from changes in an underlying index such as interest rates, foreign exchange rates or prices of securities. Derivatives utilized by the Corporation include swaps, financial futures and forward settlement contracts, and option contracts.

**Emergency Economic Stabilization Act of 2008 (EESA)** – Legislation signed into law on October 3, 2008 authorizing the U.S. Secretary of the Treasury to, among other things, establish the Troubled Asset Relief Program.

**Excess Servicing Income** – For certain assets that have been securitized, interest income, fee revenue and recoveries in excess of interest paid to the investors, gross credit losses and other trust expenses related to the securitized receivables are all classified as excess servicing income, which is a component of card income. Excess servicing income also includes the changes in fair value of the Corporation’s card related retained interests.

**Financial Stability Plan** – A plan announced on February 10, 2009 by the U.S. Treasury pursuant to the EESA which outlines a series of initiatives including the Capital Assistance Program (CAP); the creation of a new Public-Private Investment Program (PPIP); the expansion of the Term Asset-Backed Securities Loan Facility (TALF); the extension of the FDIC’s Temporary Liquidity Guarantee Program (TLGP) to October 31, 2009; the Small Business and Community Lending Initiative; a broad program to stabilize the housing market by encouraging lower mortgage rates and making it easier for homeowners to refinance and avoid foreclosure; and a new framework of governance and oversight related to the use of funds of the Financial Stability Plan.

**Interest-only Strip** – A residual interest in a securitization trust representing the right to receive future net cash flows from securitized assets after payments to third party investors and net credit losses. These arise when assets are transferred to a SPE as part of an asset securitization transaction qualifying for sale treatment under GAAP.

**Interest Rate Lock Commitment (IRLC)** – Commitment with a loan applicant in which the loan terms, including interest rate and price, are guaranteed for a designated period of time subject to credit approval.

**Loan-to-value (LTV)** – A commonly used credit quality metric that is reported in terms of ending and average LTV. Ending LTV is calculated as the outstanding carrying value of the loan at the end of the period divided by the estimated value of the property securing the loan. Estimated property values are primarily determined by utilizing the Case-Schiller Home Index, a widely used index based on data from repeat sales of single family homes. Case-Schiller indices are updated quarterly and are reported on a three-month or one-quarter lag. An additional metric related to LTV is **combined loan-to-value (CLTV)** which is similar to the LTV metric, yet combines the outstanding balance on the residential mortgage loan and the outstanding carrying value on the home equity loan or available line of credit, both of which are secured by the same property, divided by the estimated value of the property. A LTV of 100 percent reflects a loan that is currently secured by a property valued at an amount exactly equal to the carrying value or available line of the loan. Under certain circumstances, estimated values can also be determined by utilizing an automated valuation method (AVM) or Mortgage Risk Assessment Corporation (MRAC) index. An AVM is a tool that estimates the value of a prop - -



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erty by reference to large volumes of market data including sales of comparable properties and price trends specific to the MSA in which the property being valued is located. The MRAC index is similar to the Case-Schiller Home Index in that it is an index that is based on data from repeat sales of single family homes and is reported on a lag.

**Letter of Credit** – A document issued on behalf of a customer to a third party promising to pay the third party upon presentation of specified documents. A letter of credit effectively substitutes the issuer's credit for that of the customer.

**Making Home Affordable Program (MHA)** – A U.S. Treasury program to reduce the number of foreclosures and make it easier for homeowners to refinance loans. The program is comprised of the Home Affordable Modification Program (HAMP) which provides guidelines on loan modifications and is designed to help at-risk homeowners avoid foreclosure by reducing monthly mortgage payments and provides incentives to lenders to modify all eligible loans that fall under the program guidelines and the Home Affordable Refinance Program (HARP) which is available to homeowners who have a proven payment history on an existing mortgage owned by FNMA or FHLMC and is designed to help eligible homeowners refinance their mortgage loans to take advantage of current lower mortgage rates or to refinance ARMs into more stable fixed-rate mortgages. In addition, the Second Lien Program is a part of the MHA. For more information on this program see the separate definition for the Second Lien Program.

**Managed Basis** – Managed basis assumes that securitized loans were not sold and presents earnings on these loans in a manner similar to the way loans that have not been sold (i.e., held loans) are presented. Noninterest income, both on a held and managed basis, also includes the impact of adjustments to the interest-only strip that are recorded in card income.

**Managed Net Losses** – Represent net charge-offs on held loans combined with realized credit losses associated with the securitized loan portfolio.

**Mortgage Servicing Right (MSR)** – The right to service a mortgage loan when the underlying loan is sold or securitized. Servicing includes collections for principal, interest and escrow payments from borrowers and accounting for and remitting principal and interest payments to investors.

**Net Interest Yield** – Net interest income divided by average total interest-earning assets.

**Nonperforming Loans and Leases** – Includes loans and leases that have been placed on nonaccrual status, including nonaccruing loans whose contractual terms have been restructured in a manner that grants a concession to a borrower experiencing financial difficulties (troubled debt restructurings or TDRs). Loans accounted for under the fair value option, purchased impaired loans and loans held-for-sale are not reported as nonperforming loans and leases. Past due consumer credit card loans, consumer loans secured by personal property, unsecured consumer loans, consumer loans secured by real estate where repayments are insured by the Federal Housing Administration and business card loans are not placed on nonaccrual status and are, therefore, not reported as nonperforming loans and leases.

**Option-adjusted Spread (OAS)** – The spread that is added to the discount rate so that the sum of the discounted cash flows equals the market price, thus, it is a measure of the extra yield over the reference discount factor (i.e., the forward swap curve) that a company is expected to earn by holding the asset.

**Primary Dealer Credit Facility (PDCF)** – A facility announced on March 16, 2008 by the Federal Reserve to provide discount window loans to primary dealers that settle on the same business day and mature on the following business day, in exchange for a specified range of eligible collateral. The rate paid on the loan is the same as the primary credit rate

at the Federal Reserve Bank of New York. In addition, primary dealers are subject to a frequency-based fee after they exceed 45 days of use. The frequency-based fee is calculated on an escalating scale and communicated to the primary dealers in advance. The PDCF was available to primary dealers until February 1, 2010.

**Purchased Impaired Loan** – A loan purchased as an individual loan, in a portfolio of loans or in a business combination with evidence of deterioration in credit quality since origination for which it is probable, upon acquisition, that the investor will be unable to collect all contractually required payments. These loans are written down to fair value at the acquisition date.

**Qualifying Special Purpose Entity (QSPE)** – A SPE whose activities are strictly limited to holding and servicing financial assets and which meets the other criteria under applicable accounting guidance. A QSPE is generally not required to be consolidated by any party.

**Return on Average Common Shareholders' Equity** – Measure of the earnings contribution as a percentage of average common shareholders' equity.

**Second Lien Program (2MP)** – A MHA program announced on April 28, 2009 by the U.S. Treasury that focuses on creating a comprehensive affordability solution for homeowners. By focusing on shared efforts with lenders to reduce second mortgage payments, pay-for-success incentives for servicers, investors and borrowers, and a payment schedule for extinguishing second mortgages, the 2MP is designed to help up to 1.5 million homeowners. The program is designed to ensure that first and second lien holders are treated fairly and consistently with priority of liens, and offers automatic modification of a second lien when a first lien is modified. Details of the program are still being finalized as of the time of this filing.

**Securitize/Securitization** – A process by which financial assets are sold to a SPE, which then issues securities collateralized by those underlying assets, and the return on the securities issued is based on the principal and interest cash flow of the underlying assets.

**Structured Investment Vehicle (SIV)** – An entity that issues short duration debt and uses the proceeds from the issuance to purchase longer-term fixed income securities.

**Subprime Loans** – Although a standard industry definition for subprime loans (including subprime mortgage loans) does not exist, the Corporation defines subprime loans as specific product offerings for higher risk borrowers, including individuals with one or a combination of high credit risk factors, such as low FICO scores (generally less than 620 for secured products and 660 for unsecured products), high debt to income ratios and inferior payment history.

**Super Senior CDO Exposure** – Represents the most senior class of commercial paper or notes that are issued by CDO vehicles. These financial instruments benefit from the subordination of all other securities, including AAA-rated securities, issued by CDO vehicles.

**Treasury Temporary Guarantee Program for Money Market Funds (TTGP)** – A voluntary and temporary program announced on September 19, 2008 by the U.S. Treasury which provided for a guarantee to investors that they would receive \$1.00 for each money market fund share held as of September 19, 2008 in the event that a participating fund no longer had a \$1.00 per share net asset value and liquidated. With respect to such shares covered by this program, the guarantee payment would have been equal to any shortfall between the amount received by an investor in a liquidation and \$1.00 per share. Eligible money market mutual funds paid a fee to the U.S. Treasury to participate in this program which expired on September 18, 2009.

**Temporary Liquidity Guarantee Program (TLGP)** – A program announced on October 14, 2008 by the FDIC which is comprised of the Debt Guarant - -

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tee Program (DGP) under which the FDIC guaranteed, for a fee, all newly issued senior unsecured debt (e.g., promissory notes, unsubordinated unsecured notes and commercial paper) up to prescribed limits, issued by participating entities through October 31, 2009, with an emergency guarantee facility available through April 30, 2010; and the Transaction Account Guarantee Program (TAGP) under which the FDIC will guarantee, for a fee, noninterest-bearing deposit accounts held at participating FDIC-insured depository institutions until June 30, 2010.

**Term Auction Facility (TAF)** – A temporary credit facility announced on December 12, 2007 and implemented by the Federal Reserve that allows a depository institution to place a bid for an advance from its local Federal Reserve Bank at an interest rate that is determined as the result of an auction and is aimed to help ensure that liquidity provisions can be disseminated efficiently even when the unsecured interbank markets are under stress. The TAF typically auctions term funds with 28-day or 84-day maturities and is available to all depository institutions that are judged to be in generally sound financial condition by their local Federal Reserve Bank. Additionally, all TAF credit must be fully collateralized.

**Term Securities Lending Facility (TSLF)** – A weekly loan facility established and announced by the Federal Reserve on March 11, 2008 to promote liquidity in U.S. Treasury and other collateral markets and foster the functioning of financial markets by offering U.S. Treasury securities held by the System Open Market Account (SOMA) for loan over a one-month term against other program-eligible general collateral. Loans are awarded to primary dealers based on competitive bidding, subject to a minimum fee requirement. The Open Market Trading Desk of the Federal Reserve Bank of New York auctions general U.S. Treasury collateral (treasury bills, notes, bonds and inflation-indexed securities) held by SOMA for loan against all collateral currently eligible for tri-party repurchase agreements arranged by the Open Market Trading Desk and separately against collateral and investment-grade corporate securities, municipal securities, MBS and ABS.

**Tier 1 Common Capital** – Tier 1 capital including CES, less preferred stock, qualifying trust preferred securities, hybrid securities and qualifying noncontrolling interest in subsidiaries.

**Troubled Asset Relief Program (TARP)** – A program established under the EESA by the U.S. Treasury to, among other things, invest in financial institutions through capital infusions and purchase mortgages, MBS and certain other financial instruments from financial institutions, in an aggregate amount up to \$700 billion, for the purpose of stabilizing and providing liquidity to the U.S. financial markets.

**Troubled Debt Restructuring (TDR)** – Loans whose contractual terms have been restructured in a manner that grants a concession to a borrower experiencing financial difficulties. Concessions could include a reduction in the interest rate on the loan, payment extensions, forgiveness of principal, forbearance or other actions intended to maximize collection. TDRs are reported as nonperforming loans and leases while on nonaccrual status. TDRs that are on accrual status are reported as performing TDRs through the end of the calendar year in which the restructuring occurred or the year in which they are returned to accrual status. In addition, if accruing TDRs bear less than a market rate of interest at the time of modification, they are reported as performing TDRs throughout their remaining lives.

**Unrecognized Tax Benefit (UTB)** – The difference between the benefit recognized for a tax position, which is measured as the largest dollar amount of the position that is more-likely-than-not to be sustained upon settlement, and the tax benefit claimed on a tax return.

**Value-at-risk (VAR)** – A VAR model estimates a range of hypothetical scenarios to calculate a potential loss which is not expected to be exceeded with a specified confidence level. VAR is a key statistic used to measure and manage market risk.

**Variable Interest Entity (VIE)** – A term for an entity whose equity investors do not have a controlling financial interest. The entity may not have sufficient equity at risk to finance its activities without additional subordinated financial support from third parties. The equity investors may lack the ability to make significant decisions about the entity's activities, or they may not absorb the losses or receive the residual returns generated by the assets and other contractual arrangements of the VIE. The entity that will absorb a majority of expected variability (the sum of the absolute values of the expected losses and expected residual returns) consolidates the VIE and is referred to as the primary beneficiary.

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### Acronyms

<b>ABCP</b>	Asset-backed commercial paper
<b>ABS</b>	Asset-backed securities
<b>AFS</b>	Available-for-sale
<b>ALMRC</b>	Asset and Liability Market Risk Committee
<b>ALM</b>	Asset and liability management
<b>ARM</b>	Adjustable-rate mortgage
<b>ARS</b>	Auction rate securities
<b>ASF</b>	American Securitization Forum
<b>BPS</b>	Basis points
<b>CDO</b>	Collateralized debt obligation
<b>CES</b>	Common Equivalent Securities
<b>CMBS</b>	Commercial mortgage-backed securities
<b>CMO</b>	Collateralized mortgage obligation
<b>CRA</b>	Community Reinvestment Act
<b>CRC</b>	Credit Risk Committee
<b>FASB</b>	Financial Accounting Standards Board
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FFIEC</b>	Federal Financial Institutions Examination Council
<b>FHA</b>	Federal Housing Administration
<b>FHLB</b>	Federal Home Loan Bank
<b>FHLMC</b>	Federal Home Loan Mortgage Corporation
<b>FICC</b>	Fixed income, currencies and commodities
<b>FNMA</b>	Federal National Mortgage Association
<b>FTE</b>	Fully taxable-equivalent
<b>GAAP</b>	Generally accepted accounting principles in the United States of America
<b>GNMA</b>	Government National Mortgage Association
<b>GRC</b>	Global Markets Risk Committee
<b>GSE</b>	Government-sponsored enterprise
<b>IPO</b>	Initial public offering
<b>LHFS</b>	Loans held-for-sale
<b>LIBOR</b>	London InterBank Offered Rate
<b>MBS</b>	Mortgage-backed securities
<b>MD&amp;A</b>	Management's Discussion and Analysis of Financial Condition and Results of Operations
<b>MSA</b>	Metropolitan statistical area
<b>OCI</b>	Other comprehensive income
<b>RMBS</b>	Residential mortgage-backed securities
<b>ROC</b>	Risk Oversight Committee
<b>ROTE</b>	Return on average tangible shareholders' equity
<b>SBA</b>	Small Business Administration
<b>SBLCs</b>	Standby letters of credit
<b>SEC</b>	Securities and Exchange Commission
<b>SPE</b>	Special purpose entity

## Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

See Market Risk Management in the MD&A beginning on page 79 which is incorporated herein by reference.

## Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

### Report of Management on Internal Control Over Financial Reporting

The management of Bank of America Corporation is responsible for establishing and maintaining adequate internal control over financial reporting.

The Corporation's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. The Corporation's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Corporation; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of the Corporation are being made only in accordance with authorizations of management and directors of the Corporation; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Corporation's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

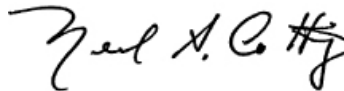
Management assessed the effectiveness of the Corporation's internal control over financial reporting as of December 31, 2009, based on the framework set forth by the Committee of Sponsoring Organizations of the

Treadway Commission in *Internal Control – Integrated Framework*. Based on that assessment, management concluded that, as of December 31, 2009, the Corporation's internal control over financial reporting is effective based on the criteria established in *Internal Control – Integrated Framework*.

The Corporation's internal control over financial reporting as of December 31, 2009 has been audited by PricewaterhouseCoopers, LLP, an independent registered public accounting firm, as stated in their accompanying report which expresses an unqualified opinion on the effectiveness of the Corporation's internal control over financial reporting as of December 31, 2009.



Brian T. Moynihan  
Chief Executive Officer and President



Neil A. Cotty  
Interim Chief Financial Officer  
Chief Accounting Officer

## Report of Independent Registered Public Accounting Firm

### To the Board of Directors and Shareholders of Bank of America Corporation:

In our opinion, the accompanying Consolidated Balance Sheet and the related Consolidated Statement of Income, Consolidated Statement of Changes in Shareholders' Equity and Consolidated Statement of Cash Flows present fairly, in all material respects, the financial position of Bank of America Corporation and its subsidiaries at December 31, 2009 and 2008, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2009 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Corporation maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Corporation's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Report of Management on Internal Control Over Financial Reporting. Our responsibility is to express opinions on these financial statements and on the Corporation's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial report - -

ing included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

*PricewaterhouseCoopers LLP*

Charlotte, North Carolina  
February 26, 2010

**Bank of America Corporation and Subsidiaries**

**Consolidated Statement of Income**

	Year Ended December 31		
	2009	2008	2007
(Dollars in millions, except per share information)			
<b>Interest income</b>			
Interest and fees on loans and leases	\$ 48,703	\$ 56,017	\$ 55,681
Interest on debt securities	12,947	13,146	9,784
Federal funds sold and securities borrowed or purchased under agreements to resell	2,894	3,313	7,722
Trading account assets	7,944	9,057	9,417
Other interest income	5,428	4,151	4,700
<b>Total interest income</b>	<b>77,916</b>	<b>85,684</b>	<b>87,304</b>
<b>Interest expense</b>			
Deposits	7,807	15,250	18,093
Short-term borrowings	5,512	12,362	21,967
Trading account liabilities	2,075	2,774	3,444
Long-term debt	15,413	9,938	9,359
<b>Total interest expense</b>	<b>30,807</b>	<b>40,324</b>	<b>52,863</b>
<b>Net interest income</b>	<b>47,109</b>	<b>45,360</b>	<b>34,441</b>
<b>Noninterest income</b>			
Card income	8,353	13,314	14,077
Service charges	11,038	10,316	8,908
Investment and brokerage services	11,919	4,972	5,147
Investment banking income	5,551	2,263	2,345
Equity investment income	10,014	539	4,064
Trading account profits (losses)	12,235	(5,911)	(4,889)
Mortgage banking income	8,791	4,087	902
Insurance income	2,760	1,833	761
Gains on sales of debt securities	4,723	1,124	180
Other income (loss)	(14)	(1,654)	1,295
Other-than-temporary impairment losses on available-for-sale debt securities:			
Total other-than-temporary impairment losses	(3,508)	(3,461)	(398)
Less: Portion of other-than-temporary impairment losses recognized in other comprehensive income	672	-	-
<b>Net impairment losses recognized in earnings on available-for-sale debt securities</b>	<b>(2,836)</b>	<b>(3,461)</b>	<b>(398)</b>
<b>Total noninterest income</b>	<b>72,534</b>	<b>27,422</b>	<b>32,392</b>
<b>Total revenue, net of interest expense</b>	<b>119,643</b>	<b>72,782</b>	<b>66,833</b>
<b>Provision for credit losses</b>	<b>48,570</b>	<b>26,825</b>	<b>8,385</b>
<b>Noninterest expense</b>			
Personnel	31,528	18,371	18,753
Occupancy	4,906	3,626	3,038
Equipment	2,455	1,655	1,391
Marketing	1,933	2,368	2,356
Professional fees	2,281	1,592	1,174
Amortization of intangibles	1,978	1,834	1,676
Data processing	2,500	2,546	1,962
Telecommunications	1,420	1,106	1,013
Other general operating	14,991	7,496	5,751
Merger and restructuring charges	2,721	935	410
<b>Total noninterest expense</b>	<b>66,713</b>	<b>41,529</b>	<b>37,524</b>
<b>Income before income taxes</b>	<b>4,360</b>	<b>4,428</b>	<b>20,924</b>
<b>Income tax expense (benefit)</b>	<b>(1,916)</b>	<b>420</b>	<b>5,942</b>
<b>Net income</b>	<b>\$ 6,276</b>	<b>\$ 4,008</b>	<b>\$ 14,982</b>
<b>Preferred stock dividends and accretion</b>	<b>8,480</b>	<b>1,452</b>	<b>182</b>
<b>Net income (loss) applicable to common shareholders</b>	<b>\$ (2,204)</b>	<b>\$ 2,556</b>	<b>\$ 14,800</b>
<b>Per common share information</b>			
Earnings (loss)	\$ (0.29)	\$ 0.54	\$ 3.32
Diluted earnings (loss)	(0.29)	0.54	3.29
Dividends paid	0.04	2.24	2.40
<b>Average common shares issued and outstanding (in thousands)</b>	<b>7,728,570</b>	<b>4,592,085</b>	<b>4,423,579</b>
<b>Average diluted common shares issued and outstanding (in thousands)</b>	<b>7,728,570</b>	<b>4,596,428</b>	<b>4,463,213</b>

See accompanying Notes to Consolidated Financial Statements.

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Bank of America Corporation and Subsidiaries

Consolidated Balance Sheet

(Dollars in millions)	December 31	
	2009	2008
<b>Assets</b>		
Cash and cash equivalents	\$ 121,339	\$ 32,857
Time deposits placed and other short-term investments	24,202	9,570
Federal funds sold and securities borrowed or purchased under agreements to resell (includes \$57,775 and \$2,330 measured at fair value and \$189,844 and \$82,099 pledged as collateral)	189,933	82,478
Trading account assets (includes \$30,921 and \$69,348 pledged as collateral)	182,206	134,315
Derivative assets	80,689	62,252
Debt securities:		
Available-for-sale (includes \$122,708 and \$158,939 pledged as collateral)	301,601	276,904
Held-to-maturity, at cost (fair value – \$9,684 and \$685)	9,840	685
<b>Total debt securities</b>	<b>311,441</b>	<b>277,589</b>
Loans and leases (includes \$4,936 and \$5,413 measured at fair value and \$118,113 and \$166,891 pledged as collateral)	900,128	931,446
Allowance for loan and lease losses	(37,200)	(23,071)
Loans and leases, net of allowance	862,928	908,375
Premises and equipment, net	15,500	13,161
Mortgage servicing rights (includes \$19,465 and \$12,733 measured at fair value)	19,774	13,056
Goodwill	86,314	81,934
Intangible assets	12,026	8,535
Loans held-for-sale (includes \$32,795 and \$18,964 measured at fair value)	43,874	31,454
Customer and other receivables	81,996	37,608
Other assets (includes \$55,909 and \$55,113 measured at fair value)	191,077	124,759
<b>Total assets</b>	<b>\$2,223,299</b>	<b>\$ 1,817,943</b>
<b>Liabilities</b>		
Deposits in domestic offices:		
Noninterest-bearing	\$ 269,615	\$ 213,994
Interest-bearing (includes \$1,663 and \$1,717 measured at fair value)	640,789	576,938
Deposits in foreign offices:		
Noninterest-bearing	5,489	4,004
Interest-bearing	75,718	88,061
<b>Total deposits</b>	<b>991,611</b>	<b>882,997</b>
Federal funds purchased and securities loaned or sold under agreements to repurchase (includes \$37,325 measured at fair value at December 31, 2009)	255,185	206,598
Trading account liabilities	65,432	51,723
Derivative liabilities	43,728	30,709
Commercial paper and other short-term borrowings (includes \$813 measured at fair value at December 31, 2009)	69,524	158,056
Accrued expenses and other liabilities (includes \$19,015 and \$7,542 measured at fair value and \$1,487 and \$421 of reserve for unfunded lending commitments)	127,854	42,516
Long-term debt (includes \$45,451 measured at fair value at December 31, 2009)	438,521	268,292
<b>Total liabilities</b>	<b>1,991,855</b>	<b>1,640,891</b>
Commitments and contingencies (Note 9 – Variable Interest Entities and Note 14 – Commitments and Contingencies)		
<b>Shareholders' equity</b>		
Preferred stock, \$0.01 par value; authorized – 100,000,000 shares; issued and outstanding – 5,246,660 and 8,202,042 shares	37,208	37,701
Common stock and additional paid-in capital, \$0.01 par value; authorized – 10,000,000,000 shares; issued and outstanding – 8,650,243,926 and 5,017,435,592 shares	128,734	76,766
Retained earnings	71,233	73,823
Accumulated other comprehensive income (loss)	(5,619)	(10,825)
Other	(112)	(413)
<b>Total shareholders' equity</b>	<b>231,444</b>	<b>177,052</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$2,223,299</b>	<b>\$ 1,817,943</b>

See accompanying Notes to Consolidated Financial Statements.

Bank of America Corporation and Subsidiaries

Consolidated Statement of Changes in Shareholders' Equity

(Dollars in millions, shares in thousands)

	Preferred Stock	Common Stock and Additional Paid-in Capital		Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Other	Total Shareholders' Equity	Comprehensive Income (Loss)
		Shares	Amount					
<b>Balance, December 31, 2006</b>	\$ 2,851	4,458,151	\$ 61,574	\$ 79,024	\$ (7,711)	\$ (466)	\$ 135,272	
Cumulative adjustment for accounting changes:								
Leveraged leases				(1,381)			(1,381)	
Fair value option and measurement				(208)			(208)	
Income tax uncertainties				(146)			(146)	
Net income				14,982			14,982	\$ 14,982
Net change in available-for-sale debt and marketable equity securities					9,269		9,269	9,269
Net change in foreign currency translation adjustments					149		149	149
Net change in derivatives					(705)		(705)	(705)
Employee benefit plan adjustments					127		127	127
Dividends paid:								
Common				(10,696)			(10,696)	
Preferred				(182)			(182)	
Issuance of preferred stock	1,558						1,558	
Common stock issued under employee plans and related tax effects		53,464	2,544			10	2,554	
Common stock repurchased		(73,730)	(3,790)				(3,790)	
<b>Balance, December 31, 2007</b>	<b>4,409</b>	<b>4,437,885</b>	<b>60,328</b>	<b>81,393</b>	<b>1,129</b>	<b>(456)</b>	<b>146,803</b>	<b>23,822</b>
Net income				4,008			4,008	4,008
Net change in available-for-sale debt and marketable equity securities					(8,557)		(8,557)	(8,557)
Net change in foreign currency translation adjustments					(1,000)		(1,000)	(1,000)
Net change in derivatives					944		944	944
Employee benefit plan adjustments					(3,341)		(3,341)	(3,341)
Dividends paid:								
Common				(10,256)			(10,256)	
Preferred				(1,272)			(1,272)	
Issuance of preferred stock and stock warrants	33,242		1,500				34,742	
Stock issued in acquisition		106,776	4,201				4,201	
Issuance of common stock		455,000	9,883				9,883	
Common stock issued under employee plans and related tax effects		17,775	854			43	897	
Other	50			(50)			-	
<b>Balance, December 31, 2008</b>	<b>37,701</b>	<b>5,017,436</b>	<b>76,766</b>	<b>73,823</b>	<b>(10,825)</b>	<b>(413)</b>	<b>177,052</b>	<b>(7,946)</b>
Cumulative adjustment for accounting change:								
Other-than-temporary impairment on debt securities				71	(71)		-	
Net income				6,276			6,276	6,276
Net change in available-for-sale debt and marketable equity securities					3,593		3,593	3,593
Net change in foreign currency translation adjustments					211		211	211
Net change in derivatives					923		923	923
Employee benefit plan adjustments					550		550	550
Dividends paid:								
Common				(326)			(326)	
Preferred				(4,537)			(4,537)	
Issuance of preferred stock and stock warrants	26,800		3,200				30,000	
Repayment of preferred stock	(41,014)			(3,986)			(45,000)	
Issuance of Common Equivalent Securities	19,244						19,244	
Stock issued in acquisition	8,605	1,375,476	20,504				29,109	
Issuance of common stock		1,250,000	13,468				13,468	
Exchange of preferred stock	(14,797)	999,935	14,221	576			-	
Common stock issued under employee plans and related tax effects		7,397	575			308	883	
Other	669			(664)		(7)	(2)	
<b>Balance, December 31, 2009</b>	<b>\$ 37,208</b>	<b>8,650,244</b>	<b>\$ 128,734</b>	<b>\$ 71,233</b>	<b>\$ (5,619)</b>	<b>\$ (112)</b>	<b>\$ 231,444</b>	<b>\$ 11,553</b>

See accompanying Notes to Consolidated Financial Statements.



**Bank of America Corporation and Subsidiaries**

**Consolidated Statement of Cash Flows**

(Dollars in millions)	Year Ended December 31		
	2009	2008	2007
<b>Operating activities</b>			
Net income	\$ 6,276	\$ 4,008	\$ 14,982
Reconciliation of net income to net cash provided by operating activities:			
Provision for credit losses	48,570	26,825	8,385
Gains on sales of debt securities	(4,723)	(1,124)	(180)
Depreciation and premises improvements amortization	2,336	1,485	1,168
Amortization of intangibles	1,978	1,834	1,676
Deferred income tax expense (benefit)	370	(5,801)	(753)
Net decrease (increase) in trading and derivative instruments	59,822	(16,973)	(8,108)
Net decrease (increase) in other assets	28,553	(6,391)	(15,855)
Net (decrease) increase in accrued expenses and other liabilities	(16,601)	(8,885)	4,190
Other operating activities, net	3,150	9,056	5,531
Net cash provided by operating activities	129,731	4,034	11,036
<b>Investing activities</b>			
Net decrease in time deposits placed and other short-term investments	19,081	2,203	2,191
Net decrease in federal funds sold and securities borrowed or purchased under agreements to resell	31,369	53,723	6,294
Proceeds from sales of available-for-sale debt securities	164,155	120,972	28,107
Proceeds from paydowns and maturities of available-for-sale debt securities	59,949	26,068	19,233
Purchases of available-for-sale debt securities	(185,145)	(184,232)	(28,016)
Proceeds from maturities of held-to-maturity debt securities	2,771	741	630
Purchases of held-to-maturity debt securities	(3,914)	(840)	(314)
Proceeds from sales of loans and leases	7,592	52,455	57,875
Other changes in loans and leases, net	21,257	(69,574)	(177,665)
Net purchases of premises and equipment	(2,240)	(2,098)	(2,143)
Proceeds from sales of foreclosed properties	1,997	1,187	104
Cash received (paid) upon acquisition, net	31,804	6,650	(19,816)
Other investing activities, net	9,249	(10,185)	5,040
Net cash provided by (used in) investing activities	157,925	(2,930)	(108,480)
<b>Financing activities</b>			
Net increase in deposits	10,507	14,830	45,368
Net decrease in federal funds purchased and securities loaned or sold under agreements to repurchase	(62,993)	(34,529)	(1,448)
Net (decrease) increase in commercial paper and other short-term borrowings	(126,426)	(33,033)	32,840
Proceeds from issuance of long-term debt	67,744	43,782	67,370
Retirement of long-term debt	(101,207)	(35,072)	(28,942)
Proceeds from issuance of preferred stock	49,244	34,742	1,558
Repayment of preferred stock	(45,000)	–	–
Proceeds from issuance of common stock	13,468	10,127	1,118
Common stock repurchased	–	–	(3,790)
Cash dividends paid	(4,863)	(11,528)	(10,878)
Excess tax benefits of share-based payments	–	42	254
Other financing activities, net	(42)	(56)	(38)
Net cash provided by (used in) financing activities	(199,568)	(10,695)	103,412
Effect of exchange rate changes on cash and cash equivalents	394	(83)	134
Net increase (decrease) in cash and cash equivalents	88,482	(9,674)	6,102
Cash and cash equivalents at January 1	32,857	42,531	36,429
<b>Cash and cash equivalents at December 31</b>	<b>\$ 121,339</b>	<b>\$ 32,857</b>	<b>\$ 42,531</b>
<b>Supplemental cash flow disclosures</b>			
Cash paid for interest	\$ 37,602	\$ 36,387	\$ 51,829
Cash paid for income taxes	2,933	4,700	9,196

During 2009, the Corporation exchanged \$14.8 billion of preferred stock by issuing 1.0 billion shares of common stock valued at \$11.5 billion.

During 2009, the Corporation transferred credit card loans of \$8.5 billion and the related allowance for loan and lease losses of \$750 million in exchange for a \$7.8 billion held-to-maturity debt security that was issued by the Corporation's U.S. Credit Card Securitization Trust.

The fair values of noncash assets acquired and liabilities assumed in the Merrill Lynch acquisition were \$618.4 billion and \$626.2 billion at January 1, 2009.

Approximately 1.4 billion shares of common stock, valued at approximately \$20.5 billion and 376 thousand shares of preferred stock valued at \$8.6 billion were issued in connection with the Merrill Lynch acquisition.

The Corporation securitized \$14.0 billion and \$26.1 billion of residential mortgage loans into mortgage-backed securities and \$0 and \$4.9 billion of automobile loans into asset-backed securities which were retained by the Corporation during 2009 and 2008.

The fair values of noncash assets acquired and liabilities assumed in the Countrywide acquisition were \$157.4 billion and \$157.8 billion at July 1, 2008.

Approximately 107 million shares of common stock, valued at approximately \$4.2 billion were issued in connection with the Countrywide acquisition.

The fair values of noncash assets acquired and liabilities assumed in the LaSalle Bank Corporation acquisition were \$115.8 billion and \$97.1 billion at October 1, 2007.

The fair values of noncash assets acquired and liabilities assumed in the U.S. Trust Corporation acquisition were \$12.9 billion and \$9.8 billion at July 1, 2007.

See accompanying Notes to Consolidated Financial Statements.

# Bank of America Corporation and Subsidiaries

## Notes to Consolidated Financial Statements

### NOTE 1 – Summary of Significant Accounting Principles

Bank of America Corporation (the Corporation), through its banking and nonbanking subsidiaries, provides a diverse range of financial services and products throughout the U.S. and in certain international markets. At December 31, 2009, the Corporation operated its banking activities primarily under two charters: Bank of America, National Association (Bank of America, N.A.) and FIA Card Services, N.A. In connection with certain acquisitions including Merrill Lynch & Co. Inc. (Merrill Lynch) and Countrywide Financial Corporation (Countrywide), the Corporation acquired banking subsidiaries that have been merged into Bank of America, N.A. with no impact on the Consolidated Financial Statements of the Corporation.

On January 1, 2009, the Corporation acquired Merrill Lynch through its merger with a subsidiary of the Corporation in exchange for common and preferred stock with a value of \$29.1 billion. On July 1, 2008, the Corporation acquired all of the outstanding shares of Countrywide through its merger with a subsidiary of the Corporation in exchange for common stock with a value of \$4.2 billion. On October 1, 2007, the Corporation acquired all the outstanding shares of ABN AMRO North America Holding Company, parent of LaSalle Bank Corporation (LaSalle), for \$21.0 billion in cash. On July 1, 2007, the Corporation acquired all the outstanding shares of U.S. Trust Corporation for \$3.3 billion in cash.

The results of operations of the acquired companies were included in the Corporation's results from their dates of acquisition.

### Principles of Consolidation and Basis of Presentation

The Consolidated Financial Statements include the accounts of the Corporation and its majority-owned subsidiaries, and those variable interest entities (VIEs) where the Corporation is the primary beneficiary. Intercompany accounts and transactions have been eliminated. Results of operations of acquired companies are included from the dates of acquisition and for VIEs, from the dates that the Corporation became the primary beneficiary. Assets held in an agency or fiduciary capacity are not included in the Consolidated Financial Statements. The Corporation accounts for investments in companies for which it owns a voting interest of 20 percent to 50 percent and for which it has the ability to exercise significant influence over operating and financing decisions using the equity method of accounting. These investments are included in other assets and are subject to impairment testing. The Corporation's proportionate share of income or loss is included in equity investment income.

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

The Corporation evaluates subsequent events through the date of filing with the Securities and Exchange Commission (SEC). Certain prior period amounts have been reclassified to conform to current period presentation.

### New Accounting Pronouncements

On July 1, 2009, the Corporation adopted new guidance that established the Financial Accounting Standards Board (FASB) Accounting Standards Codification (Codification) as the single source of authoritative GAAP. The Codification establishes a common referencing system for accounting standards and is generally organized by subject matter. Use of the Codification has no impact on the Corporation's financial condition or results of operations. In connection with the use of the Codification, this Form 10-K no longer makes reference to specific accounting standards by number or title.

In June 2009, the FASB issued new accounting guidance on transfers of financial assets and consolidation of VIEs. This new accounting guidance, which was effective on January 1, 2010, revises existing sale accounting criteria for transfers of financial assets and significantly changes the criteria by which an enterprise determines whether it must consolidate a VIE. The adoption of this new accounting guidance on January 1, 2010 resulted in the consolidation of certain qualifying special purpose entities (QSPEs) and VIEs that were not recorded on the Corporation's Consolidated Balance Sheet prior to that date. The adoption of this new accounting guidance resulted in a net incremental increase in assets, on a preliminary basis, of approximately \$100 billion, including \$70 billion resulting from consolidation of credit card trusts and \$30 billion from consolidation of other special purpose entities (SPEs) including multi-seller conduits. These amounts are net of retained interests in securitizations held on the Consolidated Balance Sheet and an \$11 billion increase in the allowance for loan losses, the majority of which relates to credit card receivables. This increase in the allowance for loan losses was recorded on January 1, 2010 as a charge net-of-tax to retained earnings for the cumulative effect of the adoption of this new accounting guidance. Initial recording of these assets and related allowance on the Corporation's Consolidated Balance Sheet had no impact on results of operations.

On January 1, 2009, the Corporation elected to early adopt new FASB guidance for determining whether a market is inactive and a transaction is distressed in order to apply the existing fair value measurements guidance. In addition, this new guidance requires enhanced disclosures regarding financial assets and liabilities that are recorded at fair value. The adoption of this new guidance did not have a material impact on the Corporation's financial condition or results of operations. The enhanced disclosures required under this new guidance are included in *Note 20 – Fair Value Measurements*.

On January 1, 2009, the Corporation elected to early adopt new FASB guidance on recognition and presentation of other-than-temporary impairment of debt securities that requires an entity to recognize the credit component of other-than-temporary impairment of a debt security in earnings and the noncredit component in other comprehensive income (OCI) when the entity does not intend to sell the security and it is more-likely-than-not that the entity will not be required to sell the security prior to recovery. This new guidance also requires expanded disclosures. In connection with the adoption of this new guidance, the Corporation recorded a cumulative-effect adjustment to reclassify \$71 million, net-of-tax, from retained earnings to accumulated OCI as of January 1,

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2009. This new guidance does not change the recognition of other-than-temporary impairment for equity securities. The expanded disclosures required by this new guidance are included in *Note 5 – Securities*.

On January 1, 2009, the Corporation adopted new FASB guidance that modifies the accounting for business combinations and requires, with limited exceptions, the acquirer in a business combination to recognize 100 percent of the assets acquired, liabilities assumed and any noncontrolling interest in the acquired company at the acquisition-date fair value. In addition, the guidance requires that acquisition-related transaction and restructuring costs be charged to expense as incurred, and requires that certain contingent assets acquired and liabilities assumed, as well as contingent consideration, be recognized at fair value. This new guidance also modifies the accounting for certain acquired income tax assets and liabilities.

Further, the new FASB guidance requires that assets acquired and liabilities assumed in a business combination that arise from contingencies be recognized at fair value on the acquisition date if fair value can be determined during the measurement period. If fair value cannot be determined, companies should typically account for the acquired contingencies under existing accounting guidance. This new guidance is effective for acquisitions consummated on or after January 1, 2009. The Corporation applied this new guidance to its January 1, 2009 acquisition of Merrill Lynch.

On January 1, 2009, the Corporation adopted new FASB guidance that defines unvested share-based payment awards that contain nonforfeitable rights to dividends as participating securities that should be included in computing earnings per share (EPS) using the two-class method. Additionally, all prior-period EPS data was adjusted retrospectively. The adoption did not have a material impact on the Corporation's financial condition or results of operations.

On January 1, 2009, the Corporation adopted new FASB guidance that requires expanded qualitative, quantitative and credit-risk disclosures about derivatives and hedging activities and their effects on the Corporation's financial position, financial performance and cash flows. The adoption of this new guidance did not impact the Corporation's financial condition or results of operations. The expanded disclosures are included in *Note 4 – Derivatives*.

On January 1, 2009, the Corporation adopted new FASB guidance requiring all entities to report noncontrolling interests in subsidiaries as equity in the Consolidated Financial Statements and to account for transactions between an entity and noncontrolling owners as equity transactions if the parent retains its controlling financial interest in the subsidiary. This new guidance also requires expanded disclosure that distinguishes between the interests of the controlling owners and the interests of the noncontrolling owners of a subsidiary. Consolidated subsidiaries in which there are noncontrolling owners are insignificant to the Corporation.

For 2009, the Corporation adopted new accounting guidance that requires disclosures on plan assets for defined pension and other postretirement plans, including how investment decisions are made, the major categories of plan assets, the inputs and valuation techniques used to measure the fair value of plan assets, the effect of Level 3 measurements on changes in plan assets and concentrations of risk within plan assets. The expanded disclosures are included in *Note 17 – Employee Benefit Plans*.

### **Cash and Cash Equivalents**

Cash and cash equivalents include cash on hand, cash items in the process of collection, and amounts due from correspondent banks and the Federal Reserve Bank.

### **Securities Financing Agreements**

Securities borrowed or purchased under agreements to resell and securities loaned or sold under agreements to repurchase (securities financing agreements) are treated as collateralized financing transactions. These agreements are recorded at the amounts at which the securities were acquired or sold plus accrued interest, except for certain securities financing agreements which the Corporation accounts for under the fair value option. Changes in the value of securities financing agreements that are accounted for under the fair value option are recorded in other income. For more information on securities financing agreements which the Corporation accounts for under the fair value option, see *Note 20 – Fair Value Measurements*. The Corporation's policy is to obtain possession of collateral with a market value equal to or in excess of the principal amount loaned under resale agreements. To ensure that the market value of the underlying collateral remains sufficient, collateral is generally valued daily and the Corporation may require counterparties to deposit additional collateral or may return collateral pledged when appropriate.

Substantially all securities financing agreements are transacted under master repurchase agreements which give the Corporation, in the event of default, the right to liquidate securities held and to offset receivables and payables with the same counterparty. The Corporation offsets securities financing agreements with the same counterparty on the Consolidated Balance Sheet where it has such a master agreement. In transactions where the Corporation acts as the lender in a securities lending agreement and receives securities that can be pledged or sold as collateral, it recognizes an asset on the Consolidated Balance Sheet at fair value, representing the securities received, and a liability for the same amount, representing the obligation to return those securities.

### **Collateral**

The Corporation accepts collateral that it is permitted by contract or custom to sell or repledge. At December 31, 2009, the fair value of this collateral was \$156.9 billion of which \$126.4 billion was sold or repledged. At December 31, 2008, the fair value of this collateral was \$144.5 billion of which \$117.6 billion was sold or repledged. The primary source of this collateral is repurchase agreements. The Corporation also pledges securities and loans as collateral in transactions that include repurchase agreements, public and trust deposits, U.S. Department of the Treasury (U.S. Treasury) tax and loan notes, and other short-term borrowings. This collateral can be sold or repledged by the counterparties to the transactions.

In addition, the Corporation obtains collateral in connection with its derivative contracts. Required collateral levels vary depending on the credit risk rating and the type of counterparty. Generally, the Corporation accepts collateral in the form of cash, U.S. Treasury securities and other marketable securities. Based on provisions contained in legal netting agreements, the Corporation nets cash collateral against the applicable derivative fair value. The Corporation also pledges collateral on its own derivative positions which can be applied against derivative liabilities.

### **Trading Instruments**

Financial instruments utilized in trading activities are carried at fair value. Fair value is generally based on quoted market prices or quoted market prices for similar assets and liabilities. If these market prices are not available, fair values are estimated based on dealer quotes, pricing models, discounted cash flow methodologies, or similar techniques where the determination of fair value may require significant management judgment or estimation. Realized and unrealized gains and losses are recognized in trading account profits (losses).

## Derivatives and Hedging Activities

Derivatives are held on behalf of customers, for trading, as economic hedges, or as qualifying accounting hedges, with the determination made when the Corporation enters into the derivative contract. The designation may change based upon management's reassessment or changing circumstances. Derivatives utilized by the Corporation include swaps, financial futures and forward settlement contracts, and option contracts. A swap agreement is a contract between two parties to exchange cash flows based on specified underlying notional amounts, assets and/or indices. Financial futures and forward settlement contracts are agreements to buy or sell a quantity of a financial instrument, index, currency or commodity at a predetermined future date, and rate or price. An option contract is an agreement that conveys to the purchaser the right, but not the obligation, to buy or sell a quantity of a financial instrument (including another derivative financial instrument), index, currency or commodity at a predetermined rate or price during a period or at a date in the future. Option agreements can be transacted on organized exchanges or directly between parties.

All derivatives are recorded on the Consolidated Balance Sheet at fair value, taking into consideration the effects of legally enforceable master netting agreements that allow the Corporation to settle positive and negative positions and offset cash collateral held with the same counterparty on a net basis. For exchange-traded contracts, fair value is based on quoted market prices. For non-exchange traded contracts, fair value is based on dealer quotes, pricing models, discounted cash flow methodologies, or similar techniques for which the determination of fair value may require significant management judgment or estimation.

Valuations of derivative assets and liabilities reflect the value of the instrument including counterparty credit risk. These values also take into account the Corporation's own credit standing, thus including in the valuation of the derivative instrument the value of the net credit differential between the counterparties to the derivative contract.

### Trading Derivatives and Economic Hedges

Derivatives held for trading purposes are included in derivative assets or derivative liabilities with changes in fair value included in trading account profits (losses).

Derivatives used as economic hedges are also included in derivative assets or derivative liabilities. Changes in the fair value of derivatives that serve as economic hedges of mortgage servicing rights (MSRs), interest rate lock commitments (IRLCs) and first mortgage loans held-for-sale (LHFS) that are originated by the Corporation are recorded in mortgage banking income. Changes in the fair value of derivatives that serve as asset and liability management (ALM) economic hedges that do not qualify or were not designated as accounting hedges are recorded in other income (loss). Credit derivatives used by the Corporation as economic hedges do not qualify as accounting hedges despite being effective economic hedges, and changes in the fair value of these derivatives are included in other income (loss).

### Derivatives Used For Hedge Accounting Purposes (Accounting Hedges)

For accounting hedges, the Corporation formally documents at inception all relationships between hedging instruments and hedged items, as well as the risk management objectives and strategies for undertaking various accounting hedges. Additionally, the Corporation uses dollar offset or regression analysis at the inception of a hedge and for each reporting period thereafter to assess whether the derivative used in its hedging transaction is expected to be and has been highly effective in offsetting changes in the fair value or cash flows of a hedged item. The Corporation discontinues hedge accounting when it is determined that a derivative is

not expected to be or has ceased to be highly effective as a hedge, and then reflects changes in fair value of the derivative in earnings after termination of the hedge relationship.

The Corporation uses its accounting hedges as either fair value hedges, cash flow hedges or hedges of net investments in foreign operations. The Corporation manages interest rate and foreign currency exchange rate sensitivity predominantly through the use of derivatives. Fair value hedges are used to protect against changes in the fair value of the Corporation's assets and liabilities that are due to interest rate or foreign exchange volatility. Cash flow hedges are used primarily to minimize the variability in cash flows of assets or liabilities, or forecasted transactions caused by interest rate or foreign exchange fluctuations. For terminated cash flow hedges, the maximum length of time over which forecasted transactions are hedged is 26 years, with a substantial portion of the hedged transactions being less than 10 years. For open or future cash flow hedges, the maximum length of time over which forecasted transactions are or will be hedged is less than seven years.

Changes in the fair value of derivatives designated as fair value hedges are recorded in earnings, together and in the same income statement line item with changes in the fair value of the related hedged item. Changes in the fair value of derivatives designated as cash flow hedges are recorded in accumulated OCI and are reclassified into the line item in the income statement in which the hedged item is recorded and in the same period the hedged item affects earnings. Hedge ineffectiveness and gains and losses on the excluded component of a derivative in assessing hedge effectiveness are recorded in earnings in the same income statement line item. The Corporation records changes in the fair value of derivatives used as hedges of the net investment in foreign operations, to the extent effective, as a component of accumulated OCI.

If a derivative instrument in a fair value hedge is terminated or the hedge designation removed, the previous adjustments to the carrying amount of the hedged asset or liability are subsequently accounted for in the same manner as other components of the carrying amount of that asset or liability. For interest-earning assets and interest-bearing liabilities, such adjustments are amortized to earnings over the remaining life of the respective asset or liability. If a derivative instrument in a cash flow hedge is terminated or the hedge designation is removed, related amounts in accumulated OCI are reclassified into earnings in the same period or periods during which the hedged forecasted transaction affects earnings. If it is probable that a forecasted transaction will not occur, any related amounts in accumulated OCI are reclassified into earnings in that period.

## Interest Rate Lock Commitments

The Corporation enters into IRLCs in connection with its mortgage banking activities to fund residential mortgage loans at specified times in the future. IRLCs that relate to the origination of mortgage loans that will be held for sale are considered derivative instruments under applicable accounting guidance. As such, these IRLCs are recorded at fair value with changes in fair value recorded in mortgage banking income.

Effective January 1, 2008, the Corporation adopted new accounting guidance that requires that the expected net future cash flows related to servicing of a loan be included in the measurement of all written loan commitments accounted for at fair value through earnings. In estimating the fair value of an IRLC, the Corporation assigns a probability to the loan commitment based on an expectation that it will be exercised and the loan will be funded. The fair value of the commitments is derived from the fair value of related mortgage loans which is based on observable market data. Changes to the fair value of IRLCs are recognized based on interest rate changes, changes in the probability that the commitment will be exercised and the passage of time. Changes from the expected future

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cash flows related to the customer relationship are excluded from the valuation of IRLCs. Prior to January 1, 2008, the Corporation did not record any unrealized gain or loss at the inception of a loan commitment, which is the time the commitment is issued to the borrower, as applicable accounting guidance at that time did not allow expected net future cash flows related to servicing of a loan to be included in the measurement of written loan commitments that are accounted for at fair value through earnings.

Outstanding IRLCs expose the Corporation to the risk that the price of the loans underlying the commitments might decline from inception of the rate lock to funding of the loan. To protect against this risk, the Corporation utilizes forward loan sales commitments and other derivative instruments, including interest rate swaps and options, to economically hedge the risk of potential changes in the value of the loans that would result from the commitments. The changes in the fair value of these derivatives are recorded in mortgage banking income.

### **Securities**

Debt securities are classified based on management's intention on the date of purchase and recorded on the Consolidated Balance Sheet as debt securities as of the trade date. Debt securities which management has the intent and ability to hold to maturity are classified as held-to-maturity (HTM) and reported at amortized cost. Debt securities that are bought and held principally for the purpose of resale in the near term are classified as trading and are carried at fair value with unrealized gains and losses included in trading account profits (losses). Other debt securities are classified as available-for-sale (AFS) and carried at fair value with net unrealized gains and losses included in accumulated OCI on an after-tax basis.

The Corporation regularly evaluates each AFS and HTM debt security whose value has declined below amortized cost to assess whether the decline in fair value is other-than-temporary. In determining whether an impairment is other-than-temporary, the Corporation considers the severity and duration of the decline in fair value, the length of time expected for recovery, the financial condition of the issuer, and other qualitative factors, as well as whether the Corporation either plans to sell the security or it is more-likely-than-not that it will be required to sell the security before recovery of its amortized cost. Beginning in 2009, under new accounting guidance for impairments of debt securities that are deemed to be other-than-temporary, the credit component of an other-than-temporary impairment loss is recognized in earnings and the non-credit component is recognized in accumulated OCI in situations where the Corporation does not intend to sell the security and it is more-likely-than-not that the Corporation will not be required to sell the security prior to recovery. Prior to January 1, 2009, unrealized losses (both the credit and non-credit components) on AFS debt securities that were deemed to be other-than-temporary were included in current period earnings. If there is an other-than-temporary impairment in the fair value of any individual security classified as HTM, the Corporation writes down the security to fair value with a corresponding charge to other income.

Interest on debt securities, including amortization of premiums and accretion of discounts, is included in interest income. Realized gains and losses from the sales of debt securities, which are included in gains (losses) on sales of debt securities, are determined using the specific identification method.

Marketable equity securities are classified based on management's intention on the date of purchase and recorded on the Consolidated Balance Sheet as of the trade date. Marketable equity securities that are bought and held principally for the purpose of resale in the near term are classified as trading and are carried at fair value with unrealized gains and losses included in trading account profits (losses). Other marketable

equity securities are accounted for as AFS and classified in other assets. All AFS marketable equity securities are carried at fair value with net unrealized gains and losses included in accumulated OCI on an after-tax basis. If there is an other-than-temporary decline in the fair value of any individual AFS marketable equity security, the Corporation reclassifies the associated net unrealized loss out of accumulated OCI with a corresponding charge to equity investment income. Dividend income on all AFS marketable equity securities is included in equity investment income. Realized gains and losses on the sale of all AFS marketable equity securities, which are recorded in equity investment income, are determined using the specific identification method.

Equity investments without readily determinable fair values are recorded in other assets. Impairment testing is based on applicable accounting guidance and the cost basis is reduced when an impairment is deemed to be other-than-temporary.

Certain equity investments held by Global Principal Investments, the Corporation's diversified equity investor in private equity, real estate and other alternative investments, are subject to investment company accounting under applicable accounting guidance, and accordingly, are carried at fair value with changes in fair value reported in equity investment income. These investments are included in other assets. Initially, the transaction price of the investment is generally considered to be the best indicator of fair value. Thereafter, valuation of direct investments is based on an assessment of each individual investment using methodologies that include publicly traded comparables derived by multiplying a key performance metric (e.g., earnings before interest, taxes, depreciation and amortization) of the portfolio company by the relevant valuation multiple observed for comparable companies, acquisition comparables, entry level multiples and discounted cash flows, and are subject to appropriate discounts for lack of liquidity or marketability. Certain factors that may influence changes in fair value include but are not limited to, recapitalizations, subsequent rounds of financing and offerings in the equity or debt capital markets. For fund investments, the Corporation generally records the fair value of its proportionate interest in the fund's capital as reported by the fund's respective managers.

Other investments held by Global Principal Investments are accounted for under either the equity method or at cost, depending on the Corporation's ownership interest, and are reported in other assets.

### **Loans and Leases**

Loans measured at historical cost are reported at their outstanding principal balances net of any unearned income, charge-offs, unamortized deferred fees and costs on originated loans, and for purchased loans, net of any premiums or discounts. Loan origination fees and certain direct origination costs are deferred and recognized as adjustments to income over the lives of the related loans. Unearned income, discounts and premiums are amortized to interest income using a level yield methodology. The Corporation elects to account for certain loans under the fair value option. Fair values for these loans are based on market prices, where available, or discounted cash flow analyses using market-based credit spreads of comparable debt instruments or credit derivatives of the specific borrower or comparable borrowers. Results of discounted cash flow analyses may be adjusted, as appropriate, to reflect other market conditions or the perceived credit risk of the borrower.

#### **Purchased Impaired Loans**

The Corporation purchases loans with and without evidence of credit quality deterioration since origination. Evidence of credit quality deterioration as of the purchase date may include statistics such as past due status, refreshed borrower credit scores and refreshed loan-to-value (LTV) ratios, some of which are not immediately available as of the purchase date. The

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Corporation continues to evaluate this information and other credit-related information as it becomes available. Interest income on purchased non-impaired loans is recognized using a level yield methodology based on the contractually required payments receivable. For purchased impaired loans, applicable accounting guidance addresses the accounting for differences between contractual cash flows and expected cash flows from the Corporation's initial investment in loans if those differences are attributable, at least in part, to credit quality. The excess of the cash flows expected to be collected measured as of the acquisition date over the estimated fair value is referred to as the accretible yield and is recognized in interest income over the remaining life of the loan using a level yield methodology. The difference between contractually required payments as of acquisition date and the cash flows expected to be collected is referred to as the nonaccretible difference.

The initial fair values for purchased impaired loans are determined by discounting both principal and interest cash flows expected to be collected using an observable discount rate for similar instruments with adjustments that management believes a market participant would consider in determining fair value. The Corporation estimates the cash flows expected to be collected upon acquisition using internal credit risk, interest rate and prepayment risk models that incorporate management's best estimate of current key assumptions such as default rates, loss severity and payment speeds.

Subsequent decreases to expected principal cash flows result in a charge to provision for credit losses and a corresponding increase to a valuation allowance included in the allowance for loan and lease losses. Subsequent increases in expected principal cash flows result in a recovery of any previously recorded allowance for loan and lease losses, to the extent applicable, and a reclassification from nonaccretible difference to accretible yield for any remaining increase. Changes in expected interest cash flows may result in reclassifications to/from the nonaccretible difference. Loan disposals, which may include sales of loans, receipt of payments in full from the borrower, foreclosure or troubled debt restructuring (TDR), result in removal of the loan from the purchased impaired loan pool at its allocated carrying amount.

### Leases

The Corporation provides equipment financing to its customers through a variety of lease arrangements. Direct financing leases are carried at the aggregate of lease payments receivable plus estimated residual value of the leased property less unearned income. Leveraged leases, which are a form of financing leases, are carried net of nonrecourse debt. Unearned income on leveraged and direct financing leases is accreted to interest income over the lease terms using methods that approximate the interest method.

### Allowance for Credit Losses

The allowance for credit losses, which includes the allowance for loan and lease losses and the reserve for unfunded lending commitments, represents management's estimate of probable losses inherent in the Corporation's lending activities. The allowance for loan and lease losses and the reserve for unfunded lending commitments exclude amounts for loans and unfunded lending commitments accounted for under the fair value option as the fair values of these instruments already reflect a credit component. The allowance for loan and lease losses represents the estimated probable credit losses in funded consumer and commercial loans and leases while the reserve for unfunded lending commitments, including standby letters of credit (SBLCs) and binding unfunded loan commitments, represents estimated probable credit losses on these unfunded credit instruments based on utilization assumptions. Credit exposures deemed to be uncollectible, excluding derivative assets, trad - -

ing account assets and loans carried at fair value, are charged against these accounts. Cash recovered on previously charged off amounts is recorded as a recovery to these accounts.

The Corporation performs periodic and systematic detailed reviews of its lending portfolios to identify credit risks and to assess the overall collectability of those portfolios. The allowance on certain homogeneous loan portfolios, which generally consist of consumer loans (e.g., consumer real estate and credit card loans) and certain commercial loans (e.g., business card and small business portfolios), is based on aggregated portfolio segment evaluations generally by product type. Loss forecast models are utilized for these portfolios which consider a variety of factors including, but not limited to, historical loss experience, estimated defaults or foreclosures based on portfolio trends, delinquencies, economic conditions and credit scores. These models are updated on a quarterly basis to incorporate information reflecting the current economic environment. The loss forecasts also incorporate the estimated increased volume and impact of consumer real estate loan modification programs, including losses associated with estimated re-default after modification.

The remaining commercial portfolios are reviewed on an individual loan basis. Loans subject to individual reviews are analyzed and segregated by risk according to the Corporation's internal risk rating scale. These risk classifications, in conjunction with an analysis of historical loss experience, current economic conditions, industry performance trends, geographic or obligor concentrations within each portfolio segment, and any other pertinent information (including individual valuations on nonperforming loans) result in the estimation of the allowance for credit losses. The historical loss experience is updated quarterly to incorporate the most recent data reflecting the current economic environment.

If necessary, a specific allowance is established for individual impaired loans. A loan is considered impaired when, based on current information and events, it is probable that the Corporation will be unable to collect all amounts due, including principal and interest, according to the contractual terms of the agreement, and once a loan has been identified as individually impaired, management measures impairment. Individually impaired loans are measured based on the present value of payments expected to be received, observable market prices, or for loans that are solely dependent on the collateral for repayment, the estimated fair value of the collateral less estimated costs to sell. If the recorded investment in impaired loans exceeds this amount, a specific allowance is established as a component of the allowance for loan and lease losses.

Purchased impaired loans are recorded at fair value and applicable accounting guidance prohibits the carrying over or creation of valuation allowances in the initial accounting for impaired loans acquired in a transfer. This applies to the purchase of an individual loan, a pool of loans and portfolios of loans acquired in a purchase business combination. Subsequent to acquisition, decreases in expected principal cash flows of purchased impaired loans are recorded as a valuation allowance included in the allowance for loan and lease losses. Subsequent increases in expected principal cash flows result in a recovery of any previously recorded allowance for loan and lease losses, to the extent applicable. Write-downs on purchased impaired loans in excess of the nonaccretible difference are charged against the allowance for loan and lease losses. For more information on the purchased impaired portfolios associated with acquisitions, see *Note 6 – Outstanding Loans and Leases*.

The allowance for loan and lease losses includes two components that are allocated to cover the estimated probable losses in each loan and lease category based on the results of the Corporation's detailed review process described above. The first component covers those commercial loans that are either nonperforming or impaired and

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consumer real estate loans that have been modified as TDRs. These loans are subject to impairment measurement at the loan level based on the present value of expected future cash flows discounted at the loan's contractual effective interest rate. Where the present value is less than the recorded investment in the loan, impairment is recognized through the provision for credit losses with a corresponding increase in the allowance for loan and lease losses. The second component covers consumer loans and performing commercial loans and leases. Included within this second component of the allowance for loan and lease losses and determined separately from the procedures outlined above are reserves which are maintained to cover uncertainties that affect the Corporation's estimate of probable losses including domestic and global economic uncertainty and large single name defaults. Management evaluates the adequacy of the allowance for loan and lease losses based on the combined total of these two components.

In addition to the allowance for loan and lease losses, the Corporation also estimates probable losses related to unfunded lending commitments, such as letters of credit and financial guarantees, and binding unfunded loan commitments. The reserve for unfunded lending commitments excludes commitments accounted for under the fair value option. Unfunded lending commitments are subject to individual reviews and are analyzed and segregated by risk according to the Corporation's internal risk rating scale. These risk classifications, in conjunction with an analysis of historical loss experience, utilization assumptions, current economic conditions, performance trends within specific portfolio segments and any other pertinent information, result in the estimation of the reserve for unfunded lending commitments.

The allowance for credit losses related to the loan and lease portfolio is reported separately on the Consolidated Balance Sheet whereas the reserve for unfunded lending commitments is reported on the Consolidated Balance Sheet in accrued expenses and other liabilities. Provision for credit losses related to the loan and lease portfolio and unfunded lending commitments is reported in the Consolidated Statement of Income.

### **Nonperforming Loans and Leases, Charge-offs and Delinquencies**

Nonperforming loans and leases generally include loans and leases that have been placed on nonaccrual status including nonaccruing loans whose contractual terms have been restructured in a manner that grants a concession to a borrower experiencing financial difficulties. Loans accounted for under the fair value option, purchased impaired loans and LHFS are not reported as nonperforming loans and leases.

In accordance with the Corporation's policies, non-bankrupt credit card loans and unsecured consumer loans are charged off no later than the end of the month in which the account becomes 180 days past due. The outstanding balance of real estate-secured loans that is in excess of the estimated property value, less cost to sell, is charged off no later than the end of the month in which the account becomes 180 days past due unless repayment of the loan is guaranteed by the Federal Housing Administration (FHA). Personal property-secured loans are charged off no later than the end of the month in which the account becomes 120 days past due. Accounts in bankruptcy are charged off for credit card and certain unsecured accounts 60 days after bankruptcy notification. For secured products, accounts in bankruptcy are written down to the collateral value, less cost to sell, by the end of the month in which the account becomes 60 days past due. Consumer credit card loans, consumer loans secured by personal property and unsecured consumer loans are not placed on nonaccrual status prior to charge-off and therefore are not reported as nonperforming loans. Real estate-secured loans are generally placed on nonaccrual status and classified as non - -

performing at 90 days past due. However, consumer loans secured by real estate where repayments are guaranteed by the FHA are not placed on nonaccrual status, and therefore, are not reported as nonperforming loans. Interest accrued but not collected is reversed when a consumer loan is placed on nonaccrual status. Interest collections on nonaccruing consumer loans for which the ultimate collectability of principal is uncertain are applied as principal reductions; otherwise, such collections are credited to interest income when received. These loans may be restored to accrual status when all principal and interest is current and full repayment of the remaining contractual principal and interest is expected, or when the loan otherwise becomes well-secured and is in the process of collection. Consumer loans whose contractual terms have been modified in a TDR and are current at the time of restructuring remain on accrual status if there is demonstrated performance prior to the restructuring and payment in full under the restructured terms is expected. Otherwise, the loans are placed on nonaccrual status and reported as nonperforming until there is sustained repayment performance for a reasonable period, generally six months. Consumer TDRs that are on accrual status are reported as performing TDRs through the end of the calendar year in which the restructuring occurred or the year in which the loans are returned to accrual status. In addition, if accruing consumer TDRs bear less than a market rate of interest at the time of modification, they are reported as performing TDRs throughout the remaining lives of the loans.

Commercial loans and leases, excluding business card loans, that are past due 90 days or more as to principal or interest, or where reasonable doubt exists as to timely collection, including loans that are individually identified as being impaired, are generally placed on nonaccrual status and classified as nonperforming unless well-secured and in the process of collection. Commercial loans and leases whose contractual terms have been modified in a TDR are placed on nonaccrual status and reported as nonperforming until the loans have performed for an adequate period of time under the restructured agreement. Accruing commercial TDRs are reported as performing TDRs through the end of the calendar year in which the loans are returned to accrual status. In addition, if accruing commercial TDRs bear less than a market rate of interest at the time of modification, they are reported as performing TDRs throughout the remaining lives of the loans. Interest accrued but not collected is reversed when a commercial loan is placed on nonaccrual status. Interest collections on nonaccruing commercial loans and leases for which the ultimate collectability of principal is uncertain are applied as principal reductions; otherwise, such collections are credited to income when received. Commercial loans and leases may be restored to accrual status when all principal and interest is current and full repayment of the remaining contractual principal and interest is expected, or when the loan otherwise becomes well-secured and is in the process of collection. Business card loans are charged off no later than the end of the month in which the account becomes 180 days past due or where 60 days have elapsed since receipt of notification of bankruptcy filing, whichever comes first. These loans are not placed on nonaccrual status prior to charge-off and therefore are not reported as nonperforming loans.

The entire balance of a consumer and commercial loan is contractually delinquent if the minimum payment is not received by the specified due date on the customer's billing statement. Interest and fees continue to accrue on past due loans until the date the loan goes into nonaccrual status, if applicable.

Purchased impaired loans are recorded at fair value at the acquisition date. Although the purchased impaired loans may be contractually delinquent, the Corporation does not classify these loans as nonperforming as the loans were written down to fair value at the acquisition date and the accretible yield is recognized in interest income over the remaining life of

the loan. In addition, reported net charge-offs exclude write-downs on purchased impaired loan pools as the fair value already considers the estimated credit losses.

### Loans Held-for-Sale

Loans that are intended to be sold in the foreseeable future, including residential mortgages, loan syndications, and to a lesser degree, commercial real estate, consumer finance and other loans, are reported as LHFS and are carried at the lower of aggregate cost or market value (fair value). The Corporation accounts for certain LHFS, including first mortgage LHFS, under the fair value option. Fair values for LHFS are based on quoted market prices, where available, or are determined by discounting estimated cash flows using interest rates approximating the Corporation's current origination rates for similar loans and adjusted to reflect the inherent credit risk. Mortgage loan origination costs related to LHFS which the Corporation accounts for under the fair value option are recognized in noninterest expense when incurred. Mortgage loan origination costs for LHFS carried at the lower of cost or market value (fair value) are capitalized as part of the carrying amount of the loans and recognized as a reduction of mortgage banking income upon the sale of such loans. LHFS that are on nonaccrual status and are reported as nonperforming are reported separately from nonperforming loans and leases.

### Premises and Equipment

Premises and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization are recognized using the straight-line method over the estimated useful lives of the assets. Estimated lives range up to 40 years for buildings, up to 12 years for furniture and equipment, and the shorter of lease term or estimated useful life for leasehold improvements.

### Mortgage Servicing Rights

The Corporation accounts for consumer-related MSRMs at fair value with changes in fair value recorded in mortgage banking income, while commercial-related and residential reverse mortgage MSRMs are accounted for using the amortization method (i.e., lower of cost or market) with impairment recognized as a reduction in mortgage banking income. To reduce the volatility of earnings to interest rate and market value fluctuations, certain securities and derivatives such as options and interest rate swaps may be used as economic hedges of the MSRMs, but are not designated as accounting hedges. These economic hedges are carried at fair value with changes in fair value recognized in mortgage banking income.

The Corporation estimates the fair value of the consumer-related MSRMs using a valuation model that calculates the present value of estimated future net servicing income. This is accomplished through an option-adjusted spread (OAS) valuation approach that factors in prepayment risk. This approach consists of projecting servicing cash flows under multiple interest rate scenarios and discounting these cash flows using risk-adjusted discount rates. The key economic assumptions used in valuations of MSRMs include weighted-average lives of the MSRMs and the OAS levels. The OAS represents the spread that is added to the discount rate so that the sum of the discounted cash flows equals the market price, therefore it is a measure of the extra yield over the reference discount factor (i.e., the forward swap curve) that the Corporation expects to earn by holding the asset. These variables can, and generally do, change from quarter to quarter as market conditions and projected interest rates change, and could have an adverse impact on the value of the MSRMs and could result in a corresponding reduction in mortgage banking income.

### Goodwill and Intangible Assets

Goodwill is calculated as the purchase premium after adjusting for the fair value of net assets acquired. Goodwill is not amortized but is reviewed for potential impairment on an annual basis, or when events or circumstances indicate a potential impairment, at the reporting unit level. A reporting unit, as defined under applicable accounting guidance, is a business segment or one level below a business segment. Under applicable accounting guidance, the goodwill impairment analysis is a two-step test. The first step of the goodwill impairment test involves comparing the fair value of each reporting unit with its carrying amount including goodwill. If the fair value of the reporting unit exceeds its carrying amount, goodwill of the reporting unit is considered not impaired; however, if the carrying amount of the reporting unit exceeds its fair value, the second step must be performed to measure potential impairment.

The second step involves calculating an implied fair value of goodwill for each reporting unit for which the first step indicated possible impairment. The implied fair value of goodwill is determined in the same manner as the amount of goodwill recognized in a business combination, which is the excess of the fair value of the reporting unit, as determined in the first step, over the aggregate fair values of the assets, liabilities and identifiable intangibles as if the reporting unit was being acquired in a business combination. Measurement of the fair values of the assets and liabilities of a reporting unit is consistent with the requirements of the fair value measurements accounting guidance, which defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The adjustments to measure the assets, liabilities and intangibles at fair value are for the purpose of measuring the implied fair value of goodwill and such adjustments are not reflected in the Consolidated Balance Sheet. If the implied fair value of goodwill exceeds the goodwill assigned to the reporting unit, there is no impairment. If the goodwill assigned to a reporting unit exceeds the implied fair value of goodwill, an impairment charge is recorded for the excess. An impairment loss recognized cannot exceed the amount of goodwill assigned to a reporting unit. An impairment loss establishes a new basis in the goodwill and subsequent reversals of goodwill impairment losses are not permitted under applicable accounting guidance. In 2009, 2008 and 2007, goodwill was tested for impairment and it was determined that goodwill was not impaired at any of these dates.

For intangible assets subject to amortization, an impairment loss is recognized if the carrying amount of the intangible asset is not recoverable and exceeds fair value. The carrying amount of the intangible asset is considered not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use of the asset.

### Special Purpose Financing Entities

In the ordinary course of business, the Corporation supports its customers' financing needs by facilitating customers' access to different funding sources, assets and risks. In addition, the Corporation utilizes certain financing arrangements to meet its balance sheet management, funding, liquidity, and market or credit risk management needs. These financing entities may be in the form of corporations, partnerships, limited liability companies or trusts, and are generally not consolidated on the Corporation's Consolidated Balance Sheet. The majority of these activities are basic term or revolving securitization vehicles for mortgages, credit cards or other types of loans which are generally funded through term-amortizing debt structures. Other SPEs finance their activities by issuing short-term commercial paper. The securities issued by these vehicles are designed to be repaid from the underlying cash flows of the vehicles' assets or the reissuance of commercial paper.



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### Securitizations

The Corporation securitizes, sells and services interests in residential mortgage loans and credit card loans, and from time to time, automobile, other consumer and commercial loans. The securitization vehicles are typically QSPEs which, in accordance with applicable accounting guidance, are legally isolated, bankruptcy remote and beyond the control of the seller, and are not consolidated in the Corporation's Consolidated Financial Statements. When the Corporation securitizes assets, it may retain a portion of the securities, subordinated tranches, interest-only strips, subordinated interests in accrued interest and fees on the securitized receivables and, in some cases, overcollateralization and cash reserve accounts, all of which are generally considered retained interests in the securitized assets. The Corporation may also retain senior tranches in these securitizations. Gains and losses upon sale of assets to a securitization vehicle are based on an allocation of the previous carrying amount of the assets to the retained interests. Carrying amounts of assets transferred are allocated in proportion to the relative fair values of the assets sold and interests retained.

Quoted market prices are primarily used to obtain fair values of senior retained interests. Generally, quoted market prices for retained residual interests are not available; therefore, the Corporation estimates fair values based upon the present value of the associated expected future cash flows. This may require management to estimate credit losses, prepayment speeds, forward interest yield curves, discount rates and other factors that impact the value of retained interests.

Interest-only strips retained in connection with credit card securitizations are classified in other assets and carried at fair value with changes in fair value recorded in card income. Other retained interests are recorded in other assets, AFS debt securities or trading account assets and generally are carried at fair value with changes recorded in income or accumulated OCI, or are recorded as HTM debt securities and carried at amortized cost. If the fair value of such retained interests has declined below carrying amount and there has been an adverse change in estimated contractual cash flows of the underlying assets, then such decline is determined to be other-than-temporary and the retained interest is written down to fair value with a corresponding charge to other income.

### Other Special Purpose Financing Entities

Other special purpose financing entities (e.g., Corporation-sponsored multi-seller conduits, collateralized debt obligation vehicles and asset acquisition conduits) are generally funded with short-term commercial paper or long-term debt. These financing entities are usually contractually limited to a narrow range of activities that facilitate the transfer of or access to various types of assets or financial instruments and provide the investors in the transaction with protection from creditors of the Corporation in the event of bankruptcy or receivership of the Corporation. In certain situations, the Corporation provides liquidity commitments and/or loss protection agreements.

The Corporation determines whether these entities should be consolidated by evaluating the degree to which it maintains control over the financing entity and will receive the risks and rewards of the assets in the financing entity. In making this determination, the Corporation considers whether the entity is a QSPE, which is generally not required to be consolidated by the seller or investors in the entity. For non-QSPE structures or VIEs, the Corporation assesses whether it is the primary beneficiary of the entity. In accordance with applicable accounting guidance, the entity that will absorb a majority of expected variability (the sum of the absolute values of the expected losses and expected residual returns) consolidates the VIE and is referred to as the primary beneficiary. As certain events occur, the Corporation reevaluates which parties will absorb varia - -

bility and whether the Corporation has become or is no longer the primary beneficiary. Reconsideration events may occur when VIEs acquire additional assets, issue new variable interests or enter into new or modified contractual arrangements. A reconsideration event may also occur when the Corporation acquires new or additional interests in a VIE.

### Fair Value

The Corporation measures the fair values of its financial instruments in accordance with accounting guidance that requires an entity to base fair value on exit price and maximize the use of observable inputs and minimize the use of unobservable inputs to determine the exit price. The Corporation categorizes its financial instruments, based on the priority of inputs to the valuation technique, into a three-level hierarchy, as described below. Trading account assets and liabilities, derivative assets and liabilities, AFS debt and marketable equity securities, MSRs, and certain other assets are carried at fair value in accordance with applicable accounting guidance. The Corporation has also elected to account for certain assets and liabilities under the fair value option, including certain corporate loans and loan commitments, LHFS, commercial paper and other short-term borrowings, securities financing agreements, asset-backed secured financings, long-term deposits and long-term debt. The following describes the three-level hierarchy.

- Level 1** Unadjusted quoted prices in active markets for identical assets or liabilities. Level 1 assets and liabilities include debt and equity securities and derivative contracts that are traded in an active exchange market, as well as certain U.S. Treasury securities that are highly liquid and are actively traded in over-the-counter markets.
- Level 2** Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. Level 2 assets and liabilities include debt securities with quoted prices that are traded less frequently than exchange-traded instruments and derivative contracts where value is determined using a pricing model with inputs that are observable in the market or can be derived principally from or corroborated by observable market data. This category generally includes U.S. government and agency mortgage-backed debt securities, corporate debt securities, derivative contracts, residential mortgage loans and certain LHFS.
- Level 3** Unobservable inputs that are supported by little or no market activity and that are significant to the overall fair value of the assets or liabilities. Level 3 assets and liabilities include financial instruments for which the determination of fair value requires significant management judgment or estimation. The fair value for such assets and liabilities is generally determined using pricing models, discounted cash flow methodologies or similar techniques that incorporate the assumptions a market participant would use in pricing the asset or liability. This category generally includes certain private equity investments and other principal investments, retained residual interests in securitizations, residential MSRs, asset-backed securities (ABS), highly structured, complex or long-dated derivative contracts, certain LHFS, IRLCs and certain collateralized debt obligations (CDOs) where independent pricing information cannot be obtained for a significant portion of the underlying assets.

## Income Taxes

There are two components of income tax expense: current and deferred. Current income tax expense approximates taxes to be paid or refunded for the current period. Deferred income tax expense results from changes in deferred tax assets and liabilities between periods. These gross deferred tax assets and liabilities represent decreases or increases in taxes expected to be paid in the future because of future reversals of temporary differences in the bases of assets and liabilities as measured by tax laws and their bases as reported in the financial statements. Deferred tax assets are also recognized for tax attributes such as net operating loss carryforwards and tax credit carryforwards. Valuation allowances are recorded to reduce deferred tax assets to the amounts management concludes are more-likely-than-not to be realized.

Income tax benefits are recognized and measured based upon a two-step model: 1) a tax position must be more-likely-than-not to be sustained based solely on its technical merits in order to be recognized, and 2) the benefit is measured as the largest dollar amount of that position that is more-likely-than-not to be sustained upon settlement. The difference between the benefit recognized and the tax benefit claimed on a tax return is referred to as an unrecognized tax benefit (UTB). The Corporation records income tax-related interest and penalties, if applicable, within income tax expense.

## Retirement Benefits

The Corporation has established retirement plans covering substantially all full-time and certain part-time employees. Pension expense under these plans is charged to current operations and consists of several components of net pension cost based on various actuarial assumptions regarding future experience under the plans.

In addition, the Corporation has established unfunded supplemental benefit plans and supplemental executive retirement plans (SERPs) for selected officers of the Corporation and its subsidiaries that provide benefits that cannot be paid from a qualified retirement plan due to Internal Revenue Code restrictions. The SERPs have been frozen and the executive officers do not accrue any additional benefits. These plans are nonqualified under the Internal Revenue Code and assets used to fund benefit payments are not segregated from other assets of the Corporation; therefore, in general, a participant's or beneficiary's claim to benefits under these plans is as a general creditor. In addition, the Corporation has established several postretirement healthcare and life insurance benefit plans.

## Accumulated Other Comprehensive Income

The Corporation records unrealized gains and losses on AFS debt and marketable equity securities, gains and losses on cash flow accounting hedges, unrecognized actuarial gains and losses, transition obligation and prior service costs on pension and postretirement plans, foreign currency translation adjustments and related hedges of net investments in foreign operations in accumulated OCI, net-of-tax. Unrealized gains and losses on AFS debt and marketable equity securities are reclassified to earnings as the gains or losses are realized upon sale of the securities. Unrealized losses on AFS securities deemed to represent other-than-temporary impairment are reclassified to earnings at the time of the charge. Beginning in 2009, for AFS debt securities that the Corporation does not intend to sell or it is more-likely-than-not that it will not be

required to sell, only the credit component of an unrealized loss is reclassified to earnings. Gains or losses on derivatives accounted for as cash flow hedges are reclassified to earnings when the hedged transaction affects earnings. Translation gains or losses on foreign currency translation adjustments are reclassified to earnings upon the substantial sale or liquidation of investments in foreign operations.

## Earnings Per Common Share

EPS is computed by dividing net income allocated to common shareholders by the weighted average common shares outstanding. Net income allocated to common shareholders represents net income applicable to common shareholders (net income adjusted for preferred stock dividends including dividends declared, accretion of discounts on preferred stock including accelerated accretion when preferred stock is repaid early, and cumulative dividends related to the current dividend period that have not been declared as of period end) less income allocated to participating securities (see discussion below). Diluted earnings per common share is computed by dividing income allocated to common shareholders by the weighted average common shares outstanding plus amounts representing the dilutive effect of stock options outstanding, restricted stock, restricted stock units, outstanding warrants, and the dilution resulting from the conversion of convertible preferred stock, if applicable.

On January 1, 2009, the Corporation adopted new accounting guidance on earnings per share that defines unvested share-based payment awards that contain nonforfeitable rights to dividends as participating securities that are included in computing EPS using the two-class method. The two-class method is an earnings allocation formula under which EPS is calculated for common stock and participating securities according to dividends declared and participating rights in undistributed earnings. Under this method, all earnings (distributed and undistributed) are allocated to participating securities and common shares based on their respective rights to receive dividends.

In an exchange of non-convertible preferred stock, income allocated to common shareholders is adjusted for the difference between the carrying value of the preferred stock and the fair value of the common stock exchanged. In an induced conversion of convertible preferred stock, income allocated to common shareholders is reduced by the excess of the fair value of the common stock exchanged over the fair value of the common stock that would have been issued under the original conversion terms.

## Foreign Currency Translation

Assets, liabilities and operations of foreign branches and subsidiaries are recorded based on the functional currency of each entity. For certain of the foreign operations, the functional currency is the local currency, in which case the assets, liabilities and operations are translated, for consolidation purposes, from the local currency to the U.S. dollar reporting currency at period-end rates for assets and liabilities and generally at average rates for operations. The resulting unrealized gains or losses as well as gains and losses from certain hedges, are reported as a component of accumulated OCI on an after-tax basis. When the foreign entity's functional currency is determined to be the U.S. dollar, the resulting remeasurement currency gains or losses on foreign currency-denominated assets or liabilities are included in earnings.

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**Credit Card and Deposit Arrangements**

**Endorsing Organization Agreements**

The Corporation contracts with other organizations to obtain their endorsement of the Corporation's loan and deposit products. This endorsement may provide to the Corporation exclusive rights to market to the organization's members or to customers on behalf of the Corporation. These organizations endorse the Corporation's loan and deposit products and provide the Corporation with their mailing lists and marketing activities. These agreements generally have terms that range from two to five years. The Corporation typically pays royalties in exchange for their endorsement. Compensation costs related to the credit card agreements are recorded as contra-revenue in card income.

**Cardholder Reward Agreements**

The Corporation offers reward programs that allow its cardholders to earn points that can be redeemed for a broad range of rewards including cash, travel and discounted products. The Corporation establishes a rewards liability based upon the points earned that are expected to be redeemed and the average cost per point redeemed. The points to be redeemed are estimated based on past redemption behavior, card product type, account transaction activity and other historical card performance. The liability is reduced as the points are redeemed. The estimated cost of the rewards programs is recorded as contra-revenue in card income.

**Insurance Income & Insurance Expense**

Property and casualty and credit life and disability premiums are recognized over the term of the policies on a pro-rata basis for all policies except for certain of the lender-placed auto insurance and the guaranteed auto protection (GAP) policies. For GAP insurance, revenue recognition is correlated to the exposure and accelerated over the life of the contract. For lender-placed auto insurance, premiums are recognized when collections become probable due to high cancellation rates experienced early in the life of the policy. Mortgage reinsurance premiums are recognized as earned. Insurance expense includes insurance claims and commissions, both of which are recorded in other general operating expense.

**NOTE 2 – Merger and Restructuring Activity**

**Merrill Lynch**

On January 1, 2009, the Corporation acquired Merrill Lynch through its merger with a subsidiary of the Corporation in exchange for common and preferred stock with a value of \$29.1 billion, creating a financial services franchise with significantly enhanced wealth management, investment banking and international capabilities. Under the terms of the merger agreement, Merrill Lynch common shareholders received 0.8595 of a share of Bank of America Corporation common stock in exchange for each share of Merrill Lynch common stock. In addition, Merrill Lynch non-convertible preferred shareholders received Bank of America Corporation preferred stock having substantially identical terms. Merrill Lynch convertible preferred stock remains outstanding and is convertible into Bank of America common stock at an equivalent exchange ratio. With the acquisition, the Corporation has one of the largest wealth management businesses in the world with approximately 15,000 financial advisors and more than \$2.1 trillion in client assets. Global investment management capabilities include an economic ownership interest of approximately 34 percent in BlackRock, Inc. (BlackRock), a publicly traded investment management company. In addition, the acquisition adds strengths in debt and equity underwriting, sales and trading, and merger and acquisition advice, creating significant opportunities to deepen relationships with corporate and institutional clients around the globe. Merrill Lynch's results of operations were included in the Corporation's results beginning January 1, 2009.

The purchase price was allocated to the acquired assets and liabilities based on their estimated fair values at the Merrill Lynch acquisition date as summarized in the following table. Goodwill of \$5.1 billion was calculated as the purchase premium after adjusting for the fair value of net assets acquired and represents the value expected from the synergies created from combining the Merrill Lynch wealth management and corporate and investment banking businesses with the Corporation's capabilities in consumer and commercial banking as well as the economies of scale expected from combining the operations of the two companies. No goodwill is expected to be deductible for federal income tax purposes. The goodwill was allocated principally to the *Global Wealth & Investment Management (GWIM)* and *Global Markets* business segments.

**Merrill Lynch Purchase Price Allocation**

(Dollars in billions, except per share amounts)

**Purchase price**

Merrill Lynch common shares exchanged (in millions)	1,600
Exchange ratio	0.8595
The Corporation's common shares issued (in millions)	1,375
Purchase price per share of the Corporation's common stock <sup>(1)</sup>	\$ 14.08
Total value of the Corporation's common stock and cash exchanged for fractional shares	\$ 19.4
Merrill Lynch preferred stock	8.6
Fair value of outstanding employee stock awards	1.1
<b>Total purchase price</b>	<b>\$ 29.1</b>
<b>Allocation of the purchase price</b>	
Merrill Lynch stockholders' equity	19.9
Merrill Lynch goodwill and intangible assets	(2.6)
Pre-tax adjustments to reflect acquired assets and liabilities at fair value:	
Derivatives and securities	(1.9)
Loans	(6.1)
Intangible assets <sup>(2)</sup>	5.4
Other assets/liabilities	(0.8)
Long-term debt	16.0
Pre-tax total adjustments	12.6
Deferred income taxes	(5.9)
After-tax total adjustments	6.7
Fair value of net assets acquired	24.0
<b>Goodwill resulting from the Merrill Lynch acquisition</b>	<b>\$ 5.1</b>

<sup>(1)</sup>The value of the shares of common stock exchanged with Merrill Lynch shareholders was based upon the closing price of the Corporation's common stock at December 31, 2008, the last trading day prior to the date of acquisition.

<sup>(2)</sup>Consists of trade name of \$1.5 billion and customer relationship and core deposit intangibles of \$3.9 billion. The amortization life is 10 years for the customer relationship and core deposit intangibles which are primarily amortized on a straight-line basis.

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### Condensed Statement of Net Assets Acquired

The following condensed statement of net assets acquired reflects the values assigned to Merrill Lynch's net assets as of the acquisition date.

(Dollars in billions)	January 1, 2009
<b>Assets</b>	
Federal funds sold and securities borrowed or purchased under agreements to resell	\$ 138.8
Trading account assets	87.9
Derivative assets	96.4
Investment securities	70.5
Loans and leases	55.9
Intangible assets	5.4
Other assets	195.3
<b>Total assets</b>	<b>\$ 650.2</b>
<b>Liabilities</b>	
Deposits	\$ 98.1
Federal funds purchased and securities loaned or sold under agreements to repurchase	111.6
Trading account liabilities	18.1
Derivative liabilities	72.0
Commercial paper and other short-term borrowings	37.9
Accrued expenses and other liabilities	99.6
Long-term debt	188.9
<b>Total liabilities</b>	<b>626.2</b>
<b>Fair value of net assets acquired</b>	<b>\$ 24.0</b>

### Contingencies

The fair value of net assets acquired includes certain contingent liabilities that were recorded as of the acquisition date. Merrill Lynch has been named as a defendant in various pending legal actions and proceedings arising in connection with its activities as a global diversified financial services institution. Some of these legal actions and proceedings include claims for substantial compensatory and/or punitive damages or claims for indeterminate amounts of damages. Merrill Lynch is also involved in investigations and/or proceedings by governmental and self-regulatory agencies. Due to the number of variables and assumptions involved in assessing the possible outcome of these legal actions, sufficient information did not exist to reasonably estimate the fair value of these contingent liabilities. As such, these contingencies have been measured in accordance with accounting guidance on contingencies which states that a loss is recognized when it is probable of occurring and the loss amount can be reasonably estimated. For further information, see *Note 14 – Commitments and Contingencies*.

In connection with the Merrill Lynch acquisition, on January 1, 2009, the Corporation recorded certain guarantees, primarily standby liquidity facilities and letters of credit, with a fair value of approximately \$1 billion. At the time of acquisition, the maximum amount that could be drawn from these guarantees was approximately \$20 billion.

### Countrywide

On July 1, 2008, the Corporation acquired Countrywide through its merger with a subsidiary of the Corporation. Under the terms of the merger agreement, Countrywide shareholders received 0.1822 of a share of Bank of America Corporation common stock in exchange for each share of Countrywide common stock. The acquisition of Countrywide significantly expanded the Corporation's mortgage originating and servicing capabilities, making it a leading mortgage originator and servicer. As provided by the merger agreement, 583 million shares of Countrywide common stock were exchanged for 107 million shares of the Corporation's common stock. Countrywide's results of operations were included in the Corporation's results beginning July 1, 2008.

The Countrywide purchase price was allocated to the assets acquired and liabilities assumed based on their fair values at the Countrywide

acquisition date as summarized in the following table. No goodwill is deductible for federal income tax purposes. All the goodwill was allocated to the *Home Loans & Insurance* business segment.

### Countrywide Purchase Price Allocation

(Dollars in billions)	
<b>Purchase price</b> <sup>(1)</sup>	<b>\$ 4.2</b>
<b>Allocation of the purchase price</b>	
Countrywide stockholders' equity <sup>(2)</sup>	8.4
Pre-tax adjustments to reflect assets acquired and liabilities assumed at fair value:	
Loans	(9.8)
Investments in other financial instruments	(0.3)
Mortgage servicing rights	(1.5)
Other assets	(0.8)
Deposits	(0.2)
Notes payable and other liabilities	(0.9)
Pre-tax total adjustments	(13.5)
Deferred income taxes	4.9
After-tax total adjustments	(8.6)
Fair value of net assets acquired	(0.2)
<b>Goodwill resulting from the Countrywide acquisition</b>	<b>\$ 4.4</b>

<sup>(1)</sup>The value of the shares of common stock exchanged with Countrywide shareholders was based upon the average of the closing prices of the Corporation's common stock for the period commencing two trading days before and ending two trading days after January 11, 2008, the date of the Countrywide merger agreement.

<sup>(2)</sup>Represents the remaining Countrywide shareholders' equity as of the acquisition date after the cancellation of the \$2.0 billion of Series B convertible preferred shares owned by the Corporation.

The Corporation acquired certain loans for which there was, at the time of the merger, evidence of deterioration of credit quality since origination and for which it was probable that all contractually required payments would not be collected. For more information, see the Countrywide purchased impaired loan discussion in *Note 6 – Outstanding Loans and Leases*.

### Other Acquisitions

On October 1, 2007, the Corporation acquired all the outstanding shares of LaSalle, for \$21.0 billion in cash. LaSalle's results of operations were included in the Corporation's results beginning October 1, 2007.

On July 1, 2007, the Corporation acquired all the outstanding shares of U.S. Trust Corporation for \$3.3 billion in cash. U.S. Trust Corporation's results of operations were included in the Corporation's results beginning July 1, 2007.

### Unaudited Pro Forma Condensed Combined Financial Information

If the Merrill Lynch and Countrywide acquisitions had been completed on January 1, 2008, total revenue, net of interest expense would have been \$66.8 billion, net loss from continuing operations would have been \$26.0 billion, and basic and diluted loss per common share would have been \$5.37 for 2008. These results include the impact of amortizing certain purchase accounting adjustments such as intangible assets as well as fair value adjustments to loans, securities and debt. The pro forma financial information does not include the impact of possible business model changes nor does it consider any potential impacts of current market conditions or revenues, expense efficiencies, asset dispositions, share repurchases or other factors. For 2009, Merrill Lynch contributed \$23.3 billion in revenue, net of interest expense, and \$4.7 billion in net income. These amounts exclude the impact of intercompany transfers of businesses and are before the consideration of certain merger-related costs, revenue opportunities and certain consolidating tax benefits that were recognized in legacy Bank of America legal entities.

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### Merger and Restructuring Charges

Merger and restructuring charges are recorded in the Consolidated Statement of Income and include incremental costs to integrate the operations of the Corporation and its recent acquisitions. These charges represent costs associated with these one-time activities and do not represent ongoing costs of the fully integrated combined organization. On January 1, 2009, the Corporation adopted new accounting guidance, on a prospective basis, that requires that acquisition-related transaction and restructuring costs be charged to expense as incurred. Previously, these expenses were recorded as an adjustment to goodwill.

The following table presents severance and employee-related charges, systems integrations and related charges, and other merger-related charges.

(Dollars in millions)	2009	2008	2007
Severance and employee-related charges	\$1,351	\$138	\$106
Systems integrations and related charges	1,155	640	240
Other	215	157	64
<b>Total merger and restructuring charges</b>	<b>\$2,721</b>	<b>\$935</b>	<b>\$410</b>

Included for 2009 are merger-related charges of \$1.8 billion related to the Merrill Lynch acquisition, \$843 million related to the Countrywide acquisition, and \$97 million related to the LaSalle acquisition. Included for 2008 are merger-related charges of \$623 million related to the LaSalle acquisition, \$205 million related to the Countrywide acquisition, and \$107 million related to the U.S. Trust Corporation acquisition. Included for 2007 are merger-related charges of \$233 million related to the 2006 MBNA Corporation (MBNA) acquisition, \$109 million related to the U.S. Trust Corporation acquisition and \$68 million related to the LaSalle acquisition.

During 2009, the \$1.8 billion merger-related charges for the Merrill Lynch acquisition included \$1.2 billion for severance and other employee-related costs, \$480 million of system integration costs, and \$129 million in other merger-related costs.

### Merger-related Exit Cost and Restructuring Reserves

The following table presents the changes in exit cost and restructuring reserves for 2009 and 2008. Exit cost reserves were established in purchase accounting resulting in an increase in goodwill. Restructuring reserves are established by a charge to merger and restructuring charges.

Exit costs were not recorded in purchase accounting for the Merrill Lynch acquisition in accordance with amendments to the accounting guidance for business combinations which were effective January 1, 2009.

(Dollars in millions)	Exit Cost Reserves		Restructuring Reserves	
	2009	2008	2009	2008
<b>Balance, January 1</b>	<b>\$ 523</b>	<b>\$ 377</b>	<b>\$ 86</b>	<b>\$ 108</b>
Exit costs and restructuring charges:				
Merrill Lynch	n/a	n/a	949	n/a
Countrywide	–	588	191	71
LaSalle	(24)	31	(6)	25
U.S. Trust Corporation	–	(3)	(1)	40
MBNA	–	(6)	–	(3)
Cash payments	(387)	(464)	(816)	(155)
<b>Balance, December 31</b>	<b>\$ 112</b>	<b>\$ 523</b>	<b>\$ 403</b>	<b>\$ 86</b>

n/a= not applicable

At December 31, 2008, there were \$523 million of exit cost reserves related principally to the Countrywide acquisition, including \$347 million for severance, relocation and other employee-related costs and \$176 million for contract terminations. During 2009, \$24 million of exit cost reserve adjustments were recorded for the LaSalle acquisition primarily due to lower than expected contract terminations. Cash payments of \$387 million during 2009 consisted of \$271 million in severance, relocation and other employee-related costs and \$116 million in contract terminations. At December 31, 2009, exit cost reserves of \$112 million related principally to Countrywide.

At December 31, 2008, there were \$86 million of restructuring reserves related to the Countrywide, LaSalle and U.S. Trust Corporation acquisitions related to severance and other employee-related costs. During 2009, \$1.1 billion was added to the restructuring reserves related to severance and other employee-related costs primarily associated with the Merrill Lynch acquisition. Cash payments of \$816 million during 2009 were all related to severance and other employee-related costs. As of December 31, 2009, restructuring reserves of \$403 million included \$328 million for Merrill Lynch and \$74 million for Countrywide.

Payments under exit cost and restructuring reserves associated with the U.S. Trust Corporation acquisition were completed in 2009 while payments associated with the LaSalle, Countrywide and Merrill Lynch acquisitions will continue into 2010.

### NOTE 3 – Trading Account Assets and Liabilities

The following table presents the components of trading account assets and liabilities at December 31, 2009 and 2008.

(Dollars in millions)	December 31	
	2009	2008
<b>Trading account assets</b>		
U.S. government and agency securities <sup>(1)</sup>	\$ 44,585	\$ 60,038
Corporate securities, trading loans and other	57,009	34,056
Equity securities	33,562	20,258
Foreign sovereign debt	28,143	13,614
Mortgage trading loans and asset-backed securities	18,907	6,349
<b>Total trading account assets</b>	<b>\$182,206</b>	<b>\$134,315</b>
<b>Trading account liabilities</b>		
U.S. government and agency securities	\$ 26,519	\$ 27,286
Equity securities	18,407	12,128
Foreign sovereign debt	12,897	7,252
Corporate securities and other	7,609	5,057
<b>Total trading account liabilities</b>	<b>\$ 65,432</b>	<b>\$ 51,723</b>

<sup>(1)</sup>Includes \$23.5 billion and \$52.6 billion at December 31, 2009 and 2008 of government-sponsored enterprise (GSE) obligations.

**NOTE 4 – Derivatives**

**Derivative Balances**

Derivatives are held for trading, as economic hedges, or as qualifying accounting hedges. The Corporation enters into derivatives to facilitate client transactions, for proprietary trading purposes and to manage risk exposures. The following table identifies derivative instruments included

on the Corporation's Consolidated Balance Sheet in derivative assets and liabilities at December 31, 2009 and 2008. Balances are provided on a gross basis, prior to the application of the impact of counterparty and collateral netting. Total derivative assets and liabilities are adjusted on an aggregate basis to take into consideration the effects of legally enforceable master netting agreements and have been reduced by the cash collateral applied.

	December 31, 2009						
	Gross Derivative Assets				Gross Derivative Liabilities		
	Contract/ Notional <sup>(1)</sup>	Trading Derivatives and Economic Hedges	Qualifying Accounting Hedges <sup>(2)</sup>	Total	Trading Derivatives and Economic Hedges	Qualifying Accounting Hedges <sup>(2)</sup>	Total
(Dollars in billions)							
<b>Interest rate contracts</b>							
Swaps	\$ 45,261.5	\$ 1,121.3	\$ 5.6	\$ 1,126.9	\$ 1,105.0	\$ 0.8	\$ 1,105.8
Futures and forwards	11,842.1	7.1	–	7.1	6.1	–	6.1
Written options	2,865.5	–	–	–	84.1	–	84.1
Purchased options	2,626.7	84.1	–	84.1	–	–	–
<b>Foreign exchange contracts</b>							
Swaps	661.9	23.7	4.6	28.3	27.3	0.5	27.8
Spot, futures and forwards	1,750.8	24.6	0.3	24.9	25.6	0.1	25.7
Written options	383.6	–	–	–	13.0	–	13.0
Purchased options	355.3	12.7	–	12.7	–	–	–
<b>Equity contracts</b>							
Swaps	58.5	2.0	–	2.0	2.0	–	2.0
Futures and forwards	79.0	3.0	–	3.0	2.2	–	2.2
Written options	283.4	–	–	–	25.1	0.4	25.5
Purchased options	273.7	27.3	–	27.3	–	–	–
<b>Commodity contracts</b>							
Swaps	65.3	6.9	0.1	7.0	6.8	–	6.8
Futures and forwards	387.8	10.4	–	10.4	9.6	–	9.6
Written options	54.9	–	–	–	7.9	–	7.9
Purchased options	50.9	7.6	–	7.6	–	–	–
<b>Credit derivatives</b>							
Purchased credit derivatives:							
Credit default swaps	2,800.5	105.5	–	105.5	45.2	–	45.2
Total return swaps/other	21.7	1.5	–	1.5	0.4	–	0.4
Written credit derivatives:							
Credit default swaps	2,788.8	44.1	–	44.1	98.4	–	98.4
Total return swaps/other	33.1	1.8	–	1.8	1.1	–	1.1
Gross derivative assets/liabilities		\$ 1,483.6	\$ 10.6	1,494.2	\$ 1,459.8	\$ 1.8	1,461.6
Less: Legally enforceable master netting agreements				(1,355.1)			(1,355.1)
Less: Cash collateral applied				(58.4)			(62.8)
<b>Total derivative assets/liabilities</b>				\$ 80.7			\$ 43.7

<sup>(1)</sup>Represents the total contract/notional amount of the derivatives outstanding and includes both written and purchased credit derivatives.

<sup>(2)</sup>Excludes \$4.4 billion of long-term debt designated as a hedge of foreign currency risk.

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December 31, 2008

	Gross Derivative Assets				Gross Derivative Liabilities			
	Contract/ Notional (1)	Trading Derivatives and Economic Hedges	Qualifying Accounting Hedges (2)	Total	Trading Derivatives and Economic Hedges	Qualifying Accounting Hedges (2)	Total	Total
(Dollars in billions)								
<b>Interest rate contracts</b>								
Swaps	\$26,577.4	\$ 1,213.2	\$ 2.2	\$ 1,215.4	\$ 1,186.0	\$ -	\$ 1,186.0	
Futures and forwards	4,432.1	5.1	-	5.1	7.9	-	7.9	
Written options	1,731.1	-	-	-	62.7	-	62.7	
Purchased options	1,656.6	60.3	-	60.3	-	-	-	
<b>Foreign exchange contracts</b>								
Swaps	438.9	17.5	3.6	21.1	20.5	1.3	21.8	
Spot, futures and forwards	1,376.5	52.3	-	52.3	51.3	-	51.3	
Written options	199.8	-	-	-	7.5	-	7.5	
Purchased options	175.7	8.0	-	8.0	-	-	-	
<b>Equity contracts</b>								
Swaps	34.7	1.8	-	1.8	1.0	-	1.0	
Futures and forwards	14.1	0.3	-	0.3	0.1	-	0.1	
Written options	214.1	-	-	-	31.6	0.1	31.7	
Purchased options	217.5	32.6	-	32.6	-	-	-	
<b>Commodity contracts</b>								
Swaps	2.1	2.4	-	2.4	2.1	-	2.1	
Futures and forwards	9.6	1.2	-	1.2	1.0	-	1.0	
Written options	17.6	-	-	-	3.8	-	3.8	
Purchased options	15.6	3.7	-	3.7	-	-	-	
<b>Credit derivatives</b>								
Purchased credit derivatives:								
Credit default swaps	1,025.9	125.7	-	125.7	3.4	-	3.4	
Total return swaps	6.6	1.8	-	1.8	0.2	-	0.2	
Written credit derivatives:								
Credit default swaps	1,000.0	3.4	-	3.4	118.8	-	118.8	
Total return swaps	6.2	0.4	-	0.4	0.1	-	0.1	
Gross derivative assets/liabilities		\$ 1,529.7	\$ 5.8	1,535.5	\$ 1,498.0	\$ 1.4	1,499.4	
Less: Legally enforceable master netting agreements				(1,438.4)			(1,438.4)	
Less: Cash collateral applied				(34.8)			(30.3)	
<b>Total derivative assets/liabilities</b>				\$ 62.3			\$ 30.7	

(1) Represents the total contract/notional amount of the derivatives outstanding and includes both written and purchased credit derivatives.

(2) Excludes \$2.0 billion of long-term debt designated as a hedge of foreign currency risk.

**ALM and Risk Management Derivatives**

The Corporation's ALM and risk management activities include the use of derivatives to mitigate risk to the Corporation including both derivatives that are designated as hedging instruments and economic hedges. Interest rate, commodity, credit and foreign exchange contracts are utilized in the Corporation's ALM and risk management activities.

The Corporation maintains an overall interest rate risk management strategy that incorporates the use of interest rate contracts to minimize significant fluctuations in earnings that are caused by interest rate volatility. The Corporation's goal is to manage interest rate sensitivity so that movements in interest rates do not significantly adversely affect earnings. As a result of interest rate fluctuations, hedged fixed-rate assets and liabilities appreciate or depreciate in fair value. Gains or losses on the derivative instruments that are linked to the hedged fixed-rate assets and liabilities are expected to substantially offset this unrealized appreciation or depreciation.

Interest rate contracts, which are generally non-leveraged generic interest rate and basis swaps, options, futures and forwards, are used by the Corporation in the management of its interest rate risk position. Non-leveraged generic interest rate swaps involve the exchange of fixed-rate and variable-rate interest payments based on the contractual underlying notional amount. Basis swaps involve the exchange of interest payments based on the contractual underlying notional amounts, where both the pay rate and the receive rate are floating rates based on differ - -

ent indices. Option products primarily consist of caps, floors and swaptions. Futures contracts used for the Corporation's ALM activities are primarily index futures providing for cash payments based upon the movements of an underlying rate index.

Interest rate and market risk can be substantial in the mortgage business. Market risk is the risk that values of mortgage assets or revenues will be adversely affected by changes in market conditions such as interest rate movements. To hedge interest rate risk in mortgage banking production income, the Corporation utilizes forward loan sale commitments and other derivative instruments including purchased options. The Corporation also utilizes derivatives such as interest rate options, interest rate swaps, forward settlement contracts and euro-dollar futures as economic hedges of the fair value of MSR's. For additional information on MSR's, see *Note 22 - Mortgage Servicing Rights*.

The Corporation uses foreign currency contracts to manage the foreign exchange risk associated with certain foreign currency-denominated assets and liabilities, as well as the Corporation's investments in foreign subsidiaries. Foreign exchange contracts, which include spot and forward contracts, represent agreements to exchange the currency of one country for the currency of another country at an agreed-upon price on an agreed-upon settlement date. Exposure to loss on these contracts will increase or decrease over their respective lives as currency exchange and interest rates fluctuate.

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The Corporation enters into derivative commodity contracts such as futures, swaps, options and forwards as well as non-derivative commodity contracts to provide price risk management services to customers or to manage price risk associated with its physical and financial commodity positions. The non-derivative commodity contracts and physical inventories of commodities expose the Corporation to earnings volatility. Cash flow and fair value accounting hedges provide a method to mitigate a portion of this earnings volatility.

The Corporation purchases credit derivatives to manage credit risk related to certain funded and unfunded credit exposures. Credit derivatives include credit default swaps, total return swaps and swaptions. These derivatives are accounted for as economic hedges and changes in fair value are recorded in other income.

## Derivatives Designated as Accounting Hedges

The Corporation uses various types of interest rate, commodity and foreign exchange derivative contracts to protect against changes in the fair value of its assets and liabilities due to fluctuations in interest rates, exchange rates and commodity prices (fair value hedges). The Corporation also uses these types of contracts to protect against changes in the cash flows of its assets and liabilities, and other forecasted transactions (cash flow hedges). The Corporation hedges its net investment in consolidated foreign operations determined to have functional currencies other than the U.S. dollar using forward exchange contracts that typically settle in 90 days, cross-currency basis swaps, and by issuing foreign currency-denominated debt.

The following table summarizes certain information related to the Corporation's derivatives designated as fair value hedges for 2009 and 2008.

	Amounts Recognized in Income					
	2009			2008		
	Derivative	Hedged Item	Hedge Ineffectiveness	Derivative	Hedged Item	Hedge Ineffectiveness
(Dollars in millions)						
<b>Derivatives designated as fair value hedges</b>						
Interest rate risk on long-term debt <sup>(1)</sup>	\$ (4,858)	\$ 4,082	\$ (776)	\$ 4,340	\$ (4,143)	\$ 197
Interest rate and foreign currency risk on long-term debt <sup>(1)</sup>	932	(858)	74	294	(444)	(150)
Interest rate risk on available-for-sale securities <sup>(2, 3)</sup>	791	(1,141)	(350)	32	(51)	(19)
Commodity price risk on commodity inventory <sup>(4)</sup>	(51)	51	—	n/a	n/a	n/a
<b>Total <sup>(5)</sup></b>	<b>\$ (3,186)</b>	<b>\$ 2,134</b>	<b>\$ (1,052)</b>	<b>\$ 4,666</b>	<b>\$ (4,638)</b>	<b>\$ 28</b>

<sup>(1)</sup>Amounts are recorded in interest expense on long-term debt.

<sup>(2)</sup>Amounts are recorded in interest income on AFS securities.

<sup>(3)</sup>Measurement of ineffectiveness in 2009 includes \$354 million of interest costs on short forward contracts. The Corporation considers this as part of the cost of hedging, and is offset by the fixed coupon receipt on the AFS security that is recognized in interest income on securities.

<sup>(4)</sup>Amounts are recorded in trading account profits (losses).

<sup>(5)</sup>For 2007, hedge ineffectiveness recognized in net interest income was \$55 million.

n/a= not applicable

The following table summarizes certain information related to the Corporation's derivatives designated as cash flow hedges and net investment hedges for 2009 and 2008. During the next 12 months, net losses in accumulated OCI of approximately \$937 million (\$590 million

after-tax) on derivative instruments that qualify as cash flow hedges are expected to be reclassified into earnings. These net losses reclassified into earnings are expected to reduce net interest income related to the respective hedged items.

	2009			2008		
	Amounts Recognized in OCI on Derivatives	Amounts Reclassified from OCI into Income	Hedge Ineffectiveness and Amount Excluded from Effectiveness Testing <sup>(1)</sup>	Amounts Recognized in OCI on Derivatives	Amounts Reclassified from OCI into Income	Hedge Ineffectiveness and Amount Excluded from Effectiveness Testing <sup>(1)</sup>
	(Dollars in millions, amounts pre-tax)					
<b>Derivatives designated as cash flow hedges</b>						
Interest rate risk on variable rate portfolios <sup>(2, 3, 4, 5)</sup>	\$ 579	\$ (1,214)	\$ 71	\$ (82)	\$ (1,334)	\$ (7)
Commodity price risk on forecasted purchases and sales <sup>(6)</sup>	72	70	(2)	n/a	n/a	n/a
Price risk on equity investments included in available-for-sale securities	(331)	—	—	243	—	—
<b>Total <sup>(7)</sup></b>	<b>\$ 320</b>	<b>\$ (1,144)</b>	<b>\$ 69</b>	<b>\$ 161</b>	<b>\$ (1,334)</b>	<b>\$ (7)</b>
<b>Net investment hedges</b>						
Foreign exchange risk <sup>(8)</sup>	\$ (2,997)	\$ —	\$ (142)	\$ 2,814	\$ —	\$ (192)

<sup>(1)</sup>Amounts related to derivatives designated as cash flow hedges represent hedge ineffectiveness and amounts related to net investment hedges represent amounts excluded from effectiveness testing.

<sup>(2)</sup>Amounts reclassified from OCI reduced interest income on assets by \$110 million and \$224 million during 2009 and 2008, and increased interest expense on liabilities by \$1.1 billion during both 2009 and 2008.

<sup>(3)</sup>Hedge ineffectiveness of \$73 million and \$(10) million was recorded in interest income and \$(2) million and \$3 million was recorded in interest expense during 2009 and 2008.

<sup>(4)</sup>Amounts recognized in OCI on derivatives exclude amounts related to terminated hedges of AFS securities of \$(9) million and \$206 million for 2009 and 2008.

<sup>(5)</sup>Amounts reclassified from OCI exclude amounts related to derivative interest accruals which increased interest income by \$104 million for 2009 and amounts which increased interest expense \$73 million for 2008.

<sup>(6)</sup>Gains reclassified from OCI into income were recorded in trading account profits (losses) during 2009, 2008 and 2007 were \$44 million, \$0 and \$18 million, respectively, related to the discontinuance of cash flow hedging because it was probable that the original forecasted transaction would not occur.

<sup>(7)</sup>For 2007, hedge ineffectiveness recognized in net interest income was \$4 million.

<sup>(8)</sup>Amounts recognized in OCI on derivatives exclude losses of \$387 million related to long-term debt designated as a net investment hedge for 2009.

n/a= not applicable



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### Economic Hedges

Derivatives designated as economic hedges are used by the Corporation to reduce certain risk exposure but are not accounted for as accounting hedges. The following table presents gains (losses) on these derivatives for 2009 and 2008. These gains (losses) are largely offset by the income or expense that is recorded on the economically hedged item.

(Dollars in millions)	2009	2008
Price risk on mortgage banking production income <sup>(1, 2)</sup>	\$ 8,898	\$ 892
Interest rate risk on mortgage banking servicing income <sup>(1)</sup>	(3,792)	8,610
Credit risk on loans and leases <sup>(3)</sup>	(698)	309
Interest rate and foreign currency risk on long-term debt and other foreign exchange transactions <sup>(3)</sup>	1,572	(1,316)
Other <sup>(3)</sup>	14	34
<b>Total</b>	<b>\$ 5,994</b>	<b>\$ 8,529</b>

<sup>(1)</sup>Gains (losses) on these derivatives are recorded in mortgage banking income.

<sup>(2)</sup>Includes gains on IRLCs related to the origination of mortgage loans that are held for sale, which are considered derivative instruments, of \$8.4 billion for 2009 and \$1.6 billion for 2008.

<sup>(3)</sup>Gains (losses) on these derivatives are recorded in other income.

### Sales and Trading Revenue

The Corporation enters into trading derivatives to facilitate client transactions, for proprietary trading purposes, and to manage risk exposures arising from trading assets and liabilities. It is the Corporation's policy to include these derivative instruments in its trading activities which include derivative and non-derivative cash instruments. The resulting risk from these derivatives is managed on a portfolio basis as part of the Corporation's *Global Markets* business segment. The related sales and trading

revenue generated within *Global Markets* is recorded on different income statement line items including trading account profits (losses) and net interest income as well as other revenue categories. However, the vast majority of income related to derivative instruments is recorded in trading account profits (losses). The following table identifies the amounts in the income statement line items attributable to the Corporation's sales and trading revenue categorized by primary risk for 2009 and 2008.

(Dollars in millions)	2009				2008			
	Trading Account Profits	Other Revenues <sup>(1)</sup>	Net Interest Income	Total	Trading Account Profits (Losses)	Other Revenues <sup>(1)</sup>	Net Interest Income	Total
Interest rate risk	\$ 3,145	\$ 33	\$ 1,068	\$ 4,246	\$ 1,083	\$ 47	\$ 276	\$ 1,406
Foreign exchange risk	972	6	26	1,004	1,320	6	13	1,339
Equity risk	2,041	2,613	246	4,900	(66)	686	99	719
Credit risk	4,433	(2,576)	4,637	6,494	(8,276)	(6,881)	4,380	(10,777)
Other risk	1,084	13	(469)	628	130	58	(14)	174
<b>Total sales and trading revenue</b>	<b>\$ 11,675</b>	<b>\$ 89</b>	<b>\$ 5,508</b>	<b>\$ 17,272</b>	<b>\$ (5,809)</b>	<b>\$ (6,084)</b>	<b>\$ 4,754</b>	<b>\$ (7,139)</b>

<sup>(1)</sup>Represents investment and brokerage services and other income recorded in *Global Markets* that the Corporation includes in its definition of sales and trading revenue.

### Credit Derivatives

The Corporation enters into credit derivatives primarily to facilitate client transactions and to manage credit risk exposures. Credit derivatives derive value based on an underlying third party-referenced obligation or a portfolio of referenced obligations and generally require the Corporation as the seller of credit protection to make payments to a buyer upon the occurrence of a predefined credit event. Such credit events generally

include bankruptcy of the referenced credit entity and failure to pay under the obligation, as well as acceleration of indebtedness and payment repudiation or moratorium. For credit derivatives based on a portfolio of referenced credits or credit indices, the Corporation may not be required to make payment until a specified amount of loss has occurred and/or may only be required to make payment up to a specified amount.

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Credit derivative instruments in which the Corporation is the seller of credit protection and their expiration at December 31, 2009 and 2008 are summarized below. These instruments are classified as investment and non-investment grade based on the credit quality of the underlying

reference obligation. The Corporation considers ratings of BBB- or higher as meeting the definition of investment grade. Non-investment grade includes non-rated credit derivative instruments.

	December 31, 2009				
	Carrying Value				
	Less than One Year	One to Three Years	Three to Five Years	Over Five Years	Total
(Dollars in millions)					
Credit default swaps:					
Investment grade	\$ 454	\$ 5,795	\$ 5,831	\$ 24,586	\$ 36,666
Non-investment grade	1,342	14,012	16,081	30,274	61,709
Total	1,796	19,807	21,912	54,860	98,375
Total return swaps/other:					
Investment grade	1	20	5	540	566
Non-investment grade	–	194	3	291	488
Total	1	214	8	831	1,054
<b>Total credit derivatives</b>	<b>\$ 1,797</b>	<b>\$ 20,021</b>	<b>\$ 21,920</b>	<b>\$ 55,691</b>	<b>\$ 99,429</b>
	Maximum Payout/Notional				
Credit default swaps:					
Investment grade	\$ 147,501	\$ 411,258	\$ 596,103	\$ 335,526	\$ 1,490,388
Non-investment grade	123,907	417,834	399,896	356,735	1,298,372
Total	271,408	829,092	995,999	692,261	2,788,760
Total return swaps/other:					
Investment grade	31	60	1,081	8,087	9,259
Non-investment grade	2,035	1,280	2,183	18,352	23,850
Total	2,066	1,340	3,264	26,439	33,109
<b>Total credit derivatives</b>	<b>\$ 273,474</b>	<b>\$ 830,432</b>	<b>\$ 999,263</b>	<b>\$ 718,700</b>	<b>\$ 2,821,869</b>
	December 31, 2008				
	Carrying Value				
	Less than One Year	One to Three Years	Three to Five Years	Over Five Years	Total
(Dollars in millions)					
Credit default swaps:					
Investment grade	\$ 1,039	\$ 13,062	\$ 32,594	\$ 29,153	\$ 75,848
Non-investment grade	1,483	9,222	19,243	13,012	42,960
Total	2,522	22,284	51,837	42,165	118,808
Total return swaps/other:					
Non-investment grade	36	8	–	13	57
<b>Total credit derivatives</b>	<b>\$ 2,558</b>	<b>\$ 22,292</b>	<b>\$ 51,837</b>	<b>\$ 42,178</b>	<b>\$ 118,865</b>
	Maximum Payout/Notional				
Credit default swaps:					
Investment grade	\$ 49,535	\$ 169,508	\$ 395,768	\$ 187,075	\$ 801,886
Non-investment grade	17,217	48,829	89,650	42,452	198,148
Total	66,752	218,337	485,418	229,527	1,000,034
Total return swaps/other:					
Non-investment grade	1,178	628	37	4,360	6,203
<b>Total credit derivatives</b>	<b>\$ 67,930</b>	<b>\$ 218,965</b>	<b>\$ 485,455</b>	<b>\$ 233,887</b>	<b>\$ 1,006,237</b>

The notional amount represents the maximum amount payable by the Corporation for most credit derivatives. However, the Corporation does not solely monitor its exposure to credit derivatives based on notional amount because this measure does not take into consideration the probability of occurrence. As such, the notional amount is not a reliable indicator of the Corporation's exposure to these contracts. Instead, a risk framework is used to define risk tolerances and establish limits to help ensure that certain credit risk-related losses occur within acceptable, predefined limits.

The Corporation economically hedges its market risk exposure to credit derivatives by entering into a variety of offsetting derivative contracts and security positions. For example, in certain instances, the Corporation may purchase credit protection with identical underlying referenced names to offset its exposure. The carrying value and notional amount of written credit derivatives for which the Corporation held purchased credit derivatives with identical underlying referenced names at December 31, 2009 was \$79.4 billion and \$2.3 trillion compared to \$92.4 billion and \$819.4 billion at December 31, 2008.

## **Credit Risk Management of Derivatives and Credit-related Contingent Features**

The Corporation executes the majority of its derivative contracts in the over-the-counter market with large, international financial institutions, including broker/dealers and, to a lesser degree, with a variety of non-financial companies. Substantially all of the derivative transactions are executed on a daily margin basis. Therefore, events such as a credit downgrade (depending on the ultimate rating level) or a breach of credit covenants would typically require an increase in the amount of collateral required of the counterparty, where applicable, and/or allow the Corporation to take additional protective measures such as early termination of all trades. Further, as discussed above, the Corporation enters into legally enforceable master netting agreements which reduce risk by permitting the closeout and netting of transactions with the same counterparty upon the occurrence of certain events.

Substantially all of the Corporation's derivative contracts contain credit risk-related contingent features, primarily in the form of International Swaps and Derivatives Association, Inc. (ISDA) master agreements that enhance the creditworthiness of these instruments as compared to other obligations of the respective counterparty with whom the Corporation has transacted (e.g., other debt or equity). These contingent features may be for the benefit of the Corporation, as well as its counterparties with respect to changes in the Corporation's creditworthiness. At December 31, 2009, the Corporation received cash and securities collateral of \$74.6 billion and posted cash and securities collateral of \$69.1 billion in the normal course of business under derivative agreements.

In connection with certain over-the-counter derivatives contracts and other trading agreements, the Corporation could be required to provide additional collateral or to terminate transactions with certain counterparties in the event of a downgrade of the senior debt ratings of Bank of America Corporation and its subsidiaries. The amount of additional collateral required depends on the contract and is usually a fixed incremental

amount and/or the market value of the exposure. At December 31, 2009, the amount of additional collateral and termination payments that would be required for such derivatives and trading agreements was approximately \$2.1 billion if the long-term credit rating of Bank of America Corporation and its subsidiaries was incrementally downgraded by one level by all ratings agencies. A second incremental one level downgrade by the ratings agencies would require approximately \$1.2 billion in additional collateral.

The Corporation records counterparty credit risk valuation adjustments on derivative assets in order to properly reflect the credit quality of the counterparty. These adjustments are necessary as the market quotes on derivatives do not fully reflect the credit risk of the counterparties to the derivative assets. The Corporation considers collateral and legally enforceable master netting agreements that mitigate its credit exposure to each counterparty in determining the counterparty credit risk valuation adjustment. All or a portion of these counterparty credit risk valuation adjustments can be reversed or otherwise adjusted in future periods due to changes in the value of the derivative contract, collateral and creditworthiness of the counterparty. During 2009, credit valuation gains of \$1.8 billion for counterparty credit risk related to derivative assets and during 2008, losses of \$3.2 billion were recognized in trading account profits (losses). At December 31, 2009 and 2008, the cumulative counterparty credit risk valuation adjustment that was included in the derivative asset balance was \$7.6 billion and \$4.0 billion.

In addition, the fair value of the Corporation's or its subsidiaries' derivative liabilities is adjusted to reflect the impact of the Corporation's credit quality. During 2009, credit valuation losses of \$801 million and during 2008, gains of \$364 million were recognized in trading account profits (losses) for changes in the Corporation's or its subsidiaries' credit risk. At December 31, 2009 and 2008, the Corporation's cumulative credit risk valuation adjustment that was included in the derivative liabilities balance was \$608 million and \$573 million.

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**NOTE 5 – Securities**

The amortized cost, gross unrealized gains and losses in accumulated OCI, and fair value of AFS debt and marketable equity securities at December 31, 2009 and 2008 were:

(Dollars in millions)	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
<b>Available-for-sale debt securities, December 31, 2009</b>				
U.S. Treasury and agency securities	\$ 22,648	\$ 414	\$ (37)	\$ 23,025
Mortgage-backed securities:				
Agency	164,677	2,415	(846)	166,246
Agency-collateralized mortgage obligations	25,330	464	(13)	25,781
Non-agency residential <sup>(1)</sup>	37,940	1,191	(4,028)	35,103
Non-agency commercial	6,354	671	(116)	6,909
Foreign securities	4,732	61	(896)	3,897
Corporate bonds	6,136	182	(126)	6,192
Other taxable securities <sup>(2)</sup>	19,475	245	(478)	19,242
Total taxable securities	287,292	5,643	(6,540)	286,395
Tax-exempt securities	15,334	115	(243)	15,206
<b>Total available-for-sale debt securities</b>	<b>\$ 302,626</b>	<b>\$ 5,758</b>	<b>\$ (6,783)</b>	<b>\$ 301,601</b>
<b>Available-for-sale marketable equity securities <sup>(3)</sup></b>	<b>\$ 6,020</b>	<b>\$ 3,895</b>	<b>\$ (507)</b>	<b>\$ 9,408</b>
<b>Available-for-sale debt securities, December 31, 2008</b>				
U.S. Treasury and agency securities	\$ 4,540	\$ 121	\$ (14)	\$ 4,647
Mortgage-backed securities:				
Agency	191,913	3,064	(146)	194,831
Non-agency residential	40,139	860	(8,825)	32,174
Non-agency commercial	3,085	–	(512)	2,573
Foreign securities	5,675	6	(678)	5,003
Corporate bonds	5,560	31	(1,022)	4,569
Other taxable securities <sup>(2)</sup>	24,832	11	(1,300)	23,543
Total taxable securities	275,744	4,093	(12,497)	267,340
Tax-exempt securities	10,501	44	(981)	9,564
<b>Total available-for-sale debt securities</b>	<b>\$ 286,245</b>	<b>\$ 4,137</b>	<b>\$ (13,478)</b>	<b>\$ 276,904</b>
<b>Available-for-sale marketable equity securities <sup>(3)</sup></b>	<b>\$ 18,892</b>	<b>\$ 7,717</b>	<b>\$ (1,537)</b>	<b>\$ 25,072</b>

<sup>(1)</sup>Includes approximately 85 percent of prime bonds, 10 percent of Alt-A bonds and five percent of subprime bonds.

<sup>(2)</sup>Includes substantially all ABS.

<sup>(3)</sup>Recorded in other assets on the Corporation's Consolidated Balance Sheet.

At December 31, 2009, the amortized cost and fair value of HTM debt securities was \$9.8 billion and \$9.7 billion, which includes ABS that were issued by the Corporation's credit card securitization trust and retained by the Corporation with an amortized cost of \$6.6 billion and a fair value of \$6.4 billion. At December 31, 2008, both the amortized cost and fair value of HTM debt securities were \$685 million. The accumulated net unrealized gains (losses) on AFS debt and marketable equity securities included in accumulated OCI were \$(628) million and \$2.1 billion, net of the related income tax expense (benefit) of \$(397) million and \$1.3 billion. At December 31, 2009 and 2008, the Corporation had nonperforming AFS debt securities of \$467 million and \$291 million.

During 2009, the Corporation transferred \$5.6 billion of auction rate securities (ARS) from trading account assets to AFS debt securities due to the Corporation's decision to hold these securities. During 2008, the Corporation reclassified \$12.6 billion of AFS debt securities to trading account assets in connection with the Countrywide acquisition as the Corporation realigned its AFS portfolio. Further, the Corporation transferred \$1.7 billion of leveraged lending bonds from trading account assets to AFS debt securities due to the Corporation's decision to hold these bonds.

During 2009, the Corporation recorded other-than-temporary impairment losses on AFS and HTM debt securities as follows:

(Dollars in millions)	2009					Total
	Non-agency Residential MBS	Non-agency Commercial MBS	Foreign Securities	Corporate Bonds	Other Taxable Securities <sup>(1)</sup>	
	Total other-than-temporary impairment losses (unrealized and realized)	\$ (2,240)	\$ (6)	\$ (360)	\$ (87)	
Unrealized other-than-temporary impairment losses recognized in OCI <sup>(2)</sup>	672	–	–	–	–	672
<b>Net impairment losses recognized in earnings <sup>(3)</sup></b>	<b>\$ (1,568)</b>	<b>\$ (6)</b>	<b>\$ (360)</b>	<b>\$ (87)</b>	<b>\$ (815)</b>	<b>\$(2,836)</b>

<sup>(1)</sup>Includes \$31 million of other-than-temporary impairment losses on HTM debt securities.

<sup>(2)</sup>Represents the noncredit component of other-than-temporary impairment losses on AFS debt securities. For 2009, for certain securities, the Corporation recognized credit losses in excess of unrealized losses in OCI. In these instances, a portion of the credit losses recognized in earnings has been offset by an unrealized gain. Balances above exclude \$582 million of gross gains recorded in OCI related to these securities for 2009.

<sup>(3)</sup>Represents the credit component of other-than-temporary impairment losses on AFS and HTM debt securities.

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Activity related to the credit component recognized in earnings on debt securities held by the Corporation for which a portion of the other-than-temporary impairment loss remains in OCI for 2009 is as follows:

(Dollars in millions)	2009
<b>Balance, January 1, 2009</b>	<b>\$ -</b>
Credit component of other-than-temporary impairment not reclassified to OCI in connection with the cumulative-effect transition adjustment <sup>(1)</sup>	22
Additions for the credit component on debt securities on which other-than temporary impairment was not previously recognized <sup>(2)</sup>	420
<b>Balance, December 31, 2009</b>	<b>\$442</b>

<sup>(1)</sup>As of January 1, 2009, the Corporation had securities with \$134 million of other-than-temporary impairment previously recognized in earnings of which \$22 million represented the credit component and \$112 million represented the noncredit component which was reclassified to OCI through a cumulative-effect transition adjustment.

<sup>(2)</sup>During 2009, the Corporation recognized \$2.4 billion of other-than-temporary impairment losses on debt securities in which no portion of other-than-temporary impairment loss remained in OCI. Other-than-temporary impairment losses related to these securities are excluded from these amounts.

As of December 31, 2009, those debt securities with other-than-temporary impairment for which a portion of the other-than-temporary impairment loss remains in OCI consisted entirely of non-agency residential Mortgage-backed Securities (MBS). The Corporation estimates the portion of loss attributable to credit using a discounted cash flow model. The Corporation estimates the expected cash flows of the underlying collateral using internal credit risk, interest rate and prepayment risk models that incorporate management's best estimate of current key assumptions such as default rates, loss severity and prepayment rates. Assumptions

used can vary widely from loan to loan, and are influenced by such factors as loan interest rate, geographical location of the borrower, borrower characteristics and collateral type. The Corporation then uses a third party vendor to determine how the underlying collateral cash flows will be distributed to each security issued from the structure. Expected principal and interest cash flows on the impaired debt security are discounted using the book yield of each individual impaired debt security.

Based on the expected cash flows derived from the model, the Corporation expects to recover the unrealized losses in accumulated OCI on non-agency residential MBS. Significant assumptions used in the valuation of non-agency residential MBS were as follows at December 31, 2009.

	Weighted-average	Range <sup>(1)</sup>	
		10 <sup>th</sup> Percentile <sup>(2)</sup>	90 <sup>th</sup> Percentile <sup>(2)</sup>
Prepayment speed <sup>(3)</sup>	14.0%	3.0%	32.7%
Loss severity <sup>(4)</sup>	51.0	21.8	61.3
Life default rate <sup>(5)</sup>	48.4	1.1	98.7

<sup>(1)</sup>Represents the range of inputs/assumptions based upon the underlying collateral.

<sup>(2)</sup>The value of a variable below which the indicated percentile of observations will fall.

<sup>(3)</sup>Annual constant prepayment speed.

<sup>(4)</sup>Loss severity rates are projected considering collateral characteristics such as LTV, creditworthiness of borrowers (FICO score) and geographic concentration. Weighted-average severity by collateral type was 47 percent for prime bonds, 52 percent for Alt-A bonds and 55 percent for subprime bonds.

<sup>(5)</sup>Default rates are projected by considering collateral characteristics including, but not limited to LTV, FICO and geographic concentration. Weighted-average life default rate by collateral type was 36 percent for prime bonds, 56 percent for Alt-A bonds and 65 percent for subprime bonds.

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The following table presents the current fair value and the associated gross unrealized losses on investments in securities with gross unrealized losses at December 31, 2009 and 2008. The table also discloses

whether these securities have had gross unrealized losses for less than twelve months, or for twelve months or longer.

	Less than Twelve Months		Twelve Months or Longer		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
(Dollars in millions)						
<b>Temporarily-impaired available-for-sale debt securities at December 31, 2009</b>						
U.S. Treasury and agency securities	\$ 4,655	\$ (37)	\$ -	\$ -	\$ 4,655	\$ (37)
Mortgage-backed securities:						
Agency	53,979	(817)	740	(29)	54,719	(846)
Agency-collateralized mortgage obligations	965	(10)	747	(3)	1,712	(13)
Non-agency residential	6,907	(557)	13,613	(3,370)	20,520	(3,927)
Non-agency commercial	1,263	(35)	1,711	(81)	2,974	(116)
Foreign securities	169	(27)	3,355	(869)	3,524	(896)
Corporate bonds	1,157	(71)	294	(55)	1,451	(126)
Other taxable securities	3,779	(70)	932	(408)	4,711	(478)
Total taxable securities	72,874	(1,624)	21,392	(4,815)	94,266	(6,439)
Tax-exempt securities	4,716	(93)	1,989	(150)	6,705	(243)
<b>Total temporarily-impaired available-for-sale debt securities</b>	<b>77,590</b>	<b>(1,717)</b>	<b>23,381</b>	<b>(4,965)</b>	<b>100,971</b>	<b>(6,682)</b>
<b>Temporarily-impaired available-for-sale marketable equity securities</b>	<b>338</b>	<b>(113)</b>	<b>1,554</b>	<b>(394)</b>	<b>1,892</b>	<b>(507)</b>
<b>Total temporarily-impaired available-for-sale securities</b>	<b>77,928</b>	<b>(1,830)</b>	<b>24,935</b>	<b>(5,359)</b>	<b>102,863</b>	<b>(7,189)</b>
<b>Other-than-temporarily impaired available-for-sale debt securities <sup>(1)</sup></b>						
Mortgage-backed securities:						
Non-agency residential	51	(17)	1,076	(84)	1,127	(101)
<b>Total temporarily-impaired and other-than-temporarily impaired available-for-sale securities</b>	<b>\$ 77,979</b>	<b>\$ (1,847)</b>	<b>\$ 26,011</b>	<b>\$ (5,443)</b>	<b>\$ 103,990</b>	<b>\$ (7,290)</b>
<b>Temporarily-impaired available-for-sale debt securities at December 31, 2008</b>						
U.S. Treasury and agency securities	\$ 306	\$ (14)	\$ -	\$ -	\$ 306	\$ (14)
Mortgage-backed securities:						
Agency	2,282	(12)	7,508	(134)	9,790	(146)
Non-agency residential	19,853	(6,750)	1,783	(2,075)	21,636	(8,825)
Non-agency commercial	215	(26)	2,358	(486)	2,573	(512)
Foreign securities	3,491	(562)	1,126	(116)	4,617	(678)
Corporate bonds	2,573	(934)	666	(88)	3,239	(1,022)
Other taxable securities	12,870	(1,077)	501	(223)	13,371	(1,300)
Total taxable securities	41,590	(9,375)	13,942	(3,122)	55,532	(12,497)
Tax-exempt securities	6,386	(682)	1,540	(299)	7,926	(981)
<b>Total temporarily-impaired available-for-sale debt securities</b>	<b>47,976</b>	<b>(10,057)</b>	<b>15,482</b>	<b>(3,421)</b>	<b>63,458</b>	<b>(13,478)</b>
<b>Temporarily-impaired available-for-sale marketable equity securities</b>	<b>3,431</b>	<b>(499)</b>	<b>1,555</b>	<b>(1,038)</b>	<b>4,986</b>	<b>(1,537)</b>
<b>Total temporarily-impaired available-for-sale securities</b>	<b>\$ 51,407</b>	<b>\$ (10,556)</b>	<b>\$ 17,037</b>	<b>\$ (4,459)</b>	<b>\$ 68,444</b>	<b>\$ (15,015)</b>

<sup>(1)</sup>Includes other-than-temporarily impaired available-for-sale debt securities in which a portion of the other-than-temporary impairment loss remains in OCI.

The impairment of AFS debt and marketable equity securities is based on a variety of factors, including the length of time and extent to which the market value has been less than cost, the financial condition of the issuer of the security, and the Corporation's intent and ability to hold the security to recovery.

At December 31, 2009, the amortized cost of approximately 12,000 AFS securities exceeded their fair value by \$7.3 billion. Included in the \$7.3 billion of gross unrealized losses on AFS securities at December 31, 2009, was \$1.9 billion of gross unrealized losses that have existed for less than twelve months and \$5.4 billion of gross unrealized losses that have existed for a period of twelve months or longer. Of the gross unreal - -

ized losses existing for twelve months or longer, \$3.6 billion, or 66 percent, of the gross unrealized losses are related to approximately 500 MBS primarily due to continued deterioration in collateralized mortgage obligation values driven by illiquidity in the markets. In addition, of the gross unrealized losses existing for twelve months or longer, \$394 million, or seven percent, is related to approximately 800 AFS marketable equity securities primarily due to the overall decline in the market during 2008. The Corporation has no intent to sell these securities and it is not more-likely-than-not that the Corporation will be required to sell these securities before recovery of amortized cost.

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The amortized cost and fair value of the Corporation's investment in AFS debt securities from the Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) and the

Federal Home Loan Mortgage Corporation (FHLMC) that exceeded 10 percent of consolidated shareholders' equity at December 31, 2009 and 2008 were:

	December 31			
	2009		2008	
	Amortized Cost	Fair Value	Amortized Cost	Fair Value
(Dollars in millions)				
Federal National Mortgage Association	\$ 100,321	\$ 101,096	\$ 102,908	\$104,126
Government National Mortgage Association	60,610	61,121	43,713	44,627
Federal Home Loan Mortgage Corporation	29,076	29,810	46,114	46,859

Securities are pledged or assigned to secure borrowed funds, government and trust deposits and for other purposes. The carrying value of pledged securities was \$122.7 billion and \$158.9 billion at December 31, 2009 and 2008.

The expected maturity distribution of the Corporation's MBS and the contractual maturity distribution of the Corporation's other debt securities - -

and the yields of the Corporation's AFS debt securities portfolio at December 31, 2009 are summarized in the following table. Actual maturities may differ from the contractual or expected maturities since borrowers may have the right to prepay obligations with or without prepayment penalties.

	December 31, 2009									
	Due in One Year or Less		Due after One Year through Five Years		Due after Five Years through Ten Years		Due after Ten Years		Total	
	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>
(Dollars in millions)										
<b>Fair value of available-for-sale debt securities</b>										
U.S. Treasury and agency securities	\$ 231	1.94%	\$ 1,888	3.31%	\$ 2,774	4.78%	\$ 18,132	4.73%	\$ 23,025	4.59%
Mortgage-backed securities:										
Agency	28	5.48	78,579	4.81	33,351	4.66	54,288	4.52	166,246	4.69
Agency-collateralized mortgage obligations	495	3.83	12,360	2.39	12,778	2.53	148	0.98	25,781	2.48
Non-agency residential	757	8.58	18,068	9.34	4,790	7.61	11,488	4.09	35,103	7.38
Non-agency commercial	132	4.22	3,729	5.91	2,779	10.89	269	6.17	6,909	7.63
Foreign securities	105	3.03	1,828	6.33	96	5.60	1,868	3.21	3,897	4.53
Corporate bonds	592	1.22	3,311	3.68	1,662	7.47	627	2.59	6,192	4.31
Other taxable securities	12,297	1.17	5,921	3.92	203	7.19	821	4.00	19,242	2.24
Total taxable securities	14,637	1.82	125,684	5.24	58,433	4.81	87,641	4.45	286,395	4.73
Tax-exempt securities <sup>(2)</sup>	6,413	0.28	1,772	6.38	3,450	6.39	3,571	5.29	15,206	3.56
<b>Total available-for-sale debt securities</b>	<b>\$21,050</b>	<b>1.35</b>	<b>\$127,456</b>	<b>5.25</b>	<b>\$61,883</b>	<b>4.89</b>	<b>\$91,212</b>	<b>4.48</b>	<b>\$301,601</b>	<b>4.67</b>
<b>Amortized cost of available-for-sale debt securities</b>	<b>\$21,271</b>		<b>\$127,395</b>		<b>\$61,103</b>		<b>\$92,857</b>		<b>\$302,626</b>	

<sup>(1)</sup>Yields are calculated based on the amortized cost of the securities.

<sup>(2)</sup>Yields of tax-exempt securities are calculated on a fully taxable-equivalent (FTE) basis.

The components of realized gains and losses on sales of debt securities for 2009, 2008 and 2007 were:

	2009	2008	2007
(Dollars in millions)			
Gross gains	\$5,047	\$1,367	\$197
Gross losses	(324)	(243)	(17)
<b>Net gains on sales of debt securities</b>	<b>\$4,723</b>	<b>\$1,124</b>	<b>\$180</b>

The income tax expense attributable to realized net gains on sales of debt securities was \$1.7 billion, \$416 million and \$67 million in 2009, 2008 and 2007, respectively.

### Certain Corporate and Strategic Investments

At December 31, 2009 and 2008, the Corporation owned approximately 11 percent, or 25.6 billion common shares and 19 percent, or 44.7 billion common shares of China Construction Bank (CCB). During 2009, the Corporation sold its initial investment of 19.1 billion common shares in CCB for a pre-tax gain of \$7.3 billion. These shares were accounted for at

fair value and recorded as AFS marketable equity securities in other assets with an offset, net-of-tax, in accumulated OCI. The remaining investment of 25.6 billion common shares is accounted for at cost, is recorded in other assets and is non-transferable until August 2011. At December 31, 2009 and 2008, the cost of the CCB investment was \$9.2 billion and \$12.0 billion, the carrying value was \$9.2 billion and \$19.7 billion, and the fair value was \$22.0 billion and \$24.5 billion. Dividend income on this investment is recorded in equity investment income. The Corporation remains a significant shareholder in CCB and intends to continue the important long-term strategic alliance with CCB originally entered into in 2005. As part of this alliance, the Corporation expects to continue to provide advice and assistance to CCB.

At December 31, 2009 and 2008, the Corporation owned approximately 188.4 million and 171.3 million preferred shares and 56.5 million and 51.3 million common shares of Itaú Unibanco Holding S.A. (Itaú Unibanco). During 2009, the Corporation received a dividend of 17.1 million preferred shares and 5.2 million common shares. The Itaú Unibanco investment is accounted for at fair value and recorded as AFS marketable equity securities in other assets with an offset, net-of-tax, in accumulated OCI. Dividend income on this investment is recorded in

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equity investment income. At December 31, 2009 and 2008, the cost of this investment was \$2.6 billion and the fair value was \$5.4 billion and \$2.5 billion.

At December 31, 2009 and 2008, the Corporation had a 24.9 percent, or \$2.5 billion and \$2.1 billion, investment in Grupo Financiero Santander, S.A., the subsidiary of Grupo Santander, S.A. This investment is recorded in other assets and is accounted for under the equity method of accounting with income being recorded in equity investment income.

As part of the acquisition of Merrill Lynch, the Corporation acquired an economic ownership in BlackRock, a publicly traded investment company. At December 31, 2009, the carrying value was \$10.0 billion representing approximately a 34 percent economic ownership interest in BlackRock. This investment is recorded in other assets and is accounted for using the equity method of accounting with income being recorded in equity investment income. During 2009, BlackRock completed its purchase of Barclays Global Investors, an asset management business, from Barclays PLC which had the effect of diluting the Corporation's ownership interest in BlackRock from approximately 50 percent to approximately 34 percent and, for accounting purposes, was treated as a sale of a portion of the Corporation's ownership interest. As a result, upon the closing of this transaction, the Corporation recorded an adjustment to its investment in

BlackRock, resulting in a pre-tax gain of \$1.1 billion. The summarized earnings information for BlackRock, which represents 100 percent of BlackRock, includes revenues of \$4.7 billion, operating income and income before income taxes of \$1.3 billion, and net income of \$875 million in 2009.

On June 26, 2009, the Corporation entered into a joint venture agreement with First Data Corporation (First Data) creating Banc of America Merchant Services, LLC. Under the terms of the agreement, the Corporation contributed its merchant processing business to the joint venture and First Data contributed certain merchant processing contracts and personnel resources. The Corporation recorded in other income a pre-tax gain of \$3.8 billion related to this transaction. The Corporation owns approximately 46.5 percent of this joint venture, 48.5 percent is owned by First Data, with the remaining stake held by a third party investor. The third party investor has the right to put their interest to the joint venture which would have the effect of increasing the Corporation's ownership interest to 49 percent. The investment in the joint venture, which was initially recorded at a fair value of \$4.7 billion, is being accounted for under the equity method of accounting with income being recorded in equity investment income. The carrying value at December 31, 2009 was \$4.7 billion.

## NOTE 6 – Outstanding Loans and Leases

Outstanding loans and leases at December 31, 2009 and 2008 were:

	December 31	
	2009	2008
(Dollars in millions)		
<b>Consumer</b>		
Residential mortgage <sup>(1)</sup>	\$ 242,129	\$ 248,063
Home equity	149,126	152,483
Discontinued real estate <sup>(2)</sup>	14,854	19,981
Credit card – domestic	49,453	64,128
Credit card – foreign	21,656	17,146
Direct/Indirect consumer <sup>(3)</sup>	97,236	83,436
Other consumer <sup>(4)</sup>	3,110	3,442
<b>Total consumer</b>	<b>577,564</b>	<b>588,679</b>
<b>Commercial</b>		
Commercial – domestic <sup>(5)</sup>	198,903	219,233
Commercial real estate <sup>(6)</sup>	69,447	64,701
Commercial lease financing	22,199	22,400
Commercial – foreign	27,079	31,020
<b>Total commercial loans</b>	<b>317,628</b>	<b>337,354</b>
Commercial loans measured at fair value <sup>(7)</sup>	4,936	5,413
<b>Total commercial</b>	<b>322,564</b>	<b>342,767</b>
<b>Total loans and leases</b>	<b>\$ 900,128</b>	<b>\$ 931,446</b>

<sup>(1)</sup>Includes foreign residential mortgages of \$552 million at December 31, 2009 mainly from the Merrill Lynch acquisition. The Corporation did not have any material foreign residential mortgage loans prior to January 1, 2009.

<sup>(2)</sup>Includes \$13.4 billion and \$18.2 billion of pay option loans and \$1.5 billion and \$1.8 billion of subprime loans at December 31, 2009 and 2008. The Corporation no longer originates these products.

<sup>(3)</sup>Includes dealer financial services loans of \$41.6 billion and \$40.1 billion, consumer lending of \$19.7 billion and \$28.2 billion, securities-based lending margin loans of \$12.9 billion and \$0, and foreign consumer loans of \$7.8 billion and \$1.8 billion at December 31, 2009 and 2008.

<sup>(4)</sup>Includes consumer finance loans of \$2.3 billion and \$2.6 billion, and other foreign consumer loans of \$709 million and \$618 million at December 31, 2009 and 2008.

<sup>(5)</sup>Includes small business commercial – domestic loans, primarily credit card related, of \$17.5 billion and \$19.1 billion at December 31, 2009 and 2008.

<sup>(6)</sup>Includes domestic commercial real estate loans of \$66.5 billion and \$63.7 billion and foreign commercial real estate loans of \$3.0 billion and \$979 million at December 31, 2009 and 2008.

<sup>(7)</sup>Certain commercial loans are accounted for under the fair value option and include commercial – domestic loans of \$3.0 billion and \$3.5 billion, commercial – foreign loans of \$1.9 billion and \$1.7 billion, and commercial real estate loans of \$90 million and \$203 million at December 31, 2009 and 2008. See *Note 20 – Fair Value Measurements* for additional discussion of fair value for certain financial instruments.

The Corporation mitigates a portion of its credit risk through synthetic securitizations which are cash collateralized and provide mezzanine risk protection of \$2.5 billion which will reimburse the Corporation in the event that losses exceed 10 bps of the original pool balance. As of December 31, 2009 and 2008, \$70.7 billion and \$109.3 billion of mortgage loans were protected by these agreements. The decrease in these credit protected pools was due to approximately \$12.1 billion in loan sales, a terminated transaction of \$6.6 billion and principal payments

during the year. During 2009, \$669 million was recognized in other income for amounts that will be reimbursed under these structures. As of December 31, 2009, the Corporation had a receivable of \$1.0 billion from these structures for reimbursement of losses. In addition, the Corporation has entered into credit protection agreements with GSEs totaling \$6.6 billion and \$9.6 billion as of December 31, 2009 and 2008, providing full protection on conforming residential mortgage loans that become severely delinquent.



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### Nonperforming Loans and Leases

The following table presents the Corporation's nonperforming loans and leases, including nonperforming TDRs at December 31, 2009 and 2008. This table excludes performing TDRs and loans accounted for under the fair value option. Nonperforming LHFS are excluded from nonperforming loans and leases as they are recorded at the lower of cost or fair value. In addition, purchased impaired loans and past due consumer

credit card, consumer non-real estate-secured loans and leases, and business card loans are not considered nonperforming loans and leases and are therefore excluded from nonperforming loans and leases. Real estate-secured, past due consumer loans repurchased pursuant to the Corporation's servicing agreements with GNMA are not reported as nonperforming as repayments are guaranteed by the FHA.

### Nonperforming Loans and Leases

	December 31	
	2009	2008
(Dollars in millions)		
<b>Consumer</b>		
Residential mortgage	\$ 16,596	\$ 7,057
Home equity	3,804	2,637
Discontinued real estate	249	77
Direct/Indirect consumer	86	26
Other consumer	104	91
<b>Total consumer</b>	<b>20,839</b>	<b>9,888</b>
<b>Commercial</b>		
Commercial – domestic <sup>(1)</sup>	5,125	2,245
Commercial real estate	7,286	3,906
Commercial lease financing	115	56
Commercial – foreign	177	290
<b>Total commercial</b>	<b>12,703</b>	<b>6,497</b>
<b>Total nonperforming loans and leases</b>	<b>\$ 33,542</b>	<b>\$ 16,385</b>

<sup>(1)</sup>Includes small business commercial – domestic loans of \$200 million and \$205 million at December 31, 2009 and 2008.

Included in certain loan categories in the nonperforming table above are TDRs that were classified as nonperforming. At December 31, 2009 and 2008, the Corporation had \$2.9 billion and \$209 million of residential mortgages, \$1.7 billion and \$302 million of home equity, \$486 million and \$44 million of commercial – domestic loans, and \$43 million and \$5 million of discontinued real estate loans that were TDRs and classified as nonperforming. In addition to these amounts, the Corporation had performing TDRs that were on accrual status of \$2.3 billion and \$320 million of residential mortgages, \$639 million and \$1 million of home equity, \$91 million and \$13 million of commercial – domestic loans, and \$35 million and \$66 million of discontinued real estate.

### Impaired Loans and Troubled Debt Restructurings

A loan is considered impaired when, based on current information and events, it is probable that the Corporation will be unable to collect all amounts due from the borrower in accordance with the contractual terms of the loan. Impaired loans include nonperforming commercial loans, commercial performing TDRs, and both performing and nonperforming consumer real estate TDRs. As defined in applicable accounting guidance, impaired loans exclude nonperforming consumer loans not modified in a TDR, and all commercial loans and leases accounted for under the fair value option. Purchased impaired loans are reported and discussed separately below.

At December 31, 2009 and 2008, the Corporation had \$12.7 billion and \$6.5 billion of commercial impaired loans and \$7.7 billion and \$903 million of consumer impaired loans. The average recorded investment in the commercial and consumer impaired loans for 2009, 2008 and 2007 was approximately \$15.1 billion, \$5.0 billion and \$1.2 billion, respectively. At December 31, 2009 and 2008, the recorded investment in impaired loans requiring an allowance for loan and lease losses was \$18.6 billion and \$6.9 billion, and the related allowance for loan and lease losses was \$3.0 billion and \$720 million. For 2009, 2008 and 2007, interest income recognized on impaired loans totaled \$266 million, \$105 million and \$130 million, respectively.

At December 31, 2009 and 2008, remaining commitments to lend additional funds to debtors whose terms have been modified in a commercial or consumer TDR were immaterial.

The Corporation seeks to assist customers that are experiencing financial difficulty through renegotiating credit card and consumer lending loans while ensuring compliance with Federal Financial Institutions Examination Council (FFIEC) guidelines. At December 31, 2009 and 2008, the Corporation had renegotiated consumer credit card – domestic held loans of \$4.2 billion and \$2.3 billion of which \$3.1 billion and \$1.7 billion were current or less than 30 days past due under the modified terms. In addition, at December 31, 2009 and 2008, the Corporation had renegotiated consumer credit card – foreign held loans of \$898 million and \$517 million of which \$471 million and \$287 million were current or less than 30 days past due under the modified terms, and consumer lending loans of \$2.0 billion and \$1.3 billion of which \$1.5 billion and \$854 million were current or less than 30 days past due under the modified terms. These renegotiated loans are excluded from nonperforming loans.

### Purchased Impaired Loans

Purchased impaired loans are acquired loans with evidence of credit quality deterioration since origination for which it is probable at purchase date that the Corporation will be unable to collect all contractually required payments. In connection with the Countrywide acquisition in 2008, the Corporation acquired purchased impaired loans, substantially all of which are residential mortgage, home equity and discontinued real estate, with an unpaid principal balance of \$47.7 billion and \$55.4 billion and a carrying amount of \$37.5 billion and \$42.2 billion at December 31, 2009 and 2008. At December 31, 2009, the unpaid principal balance of Merrill Lynch purchased impaired consumer and commercial loans was \$2.4 billion and \$2.0 billion and the carrying amount of these loans was \$2.1 billion and \$692 million. As of the acquisition date of January 1, 2009, these loans had an unpaid principal balance of \$2.7 billion and \$2.9 billion and a fair value of \$2.3 billion and \$1.9 billion.

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The following table provides details on purchased impaired loans obtained in the Merrill Lynch acquisition. This information is provided only for acquisitions that occurred in the current year.

### Acquired Loan Information for Merrill Lynch as of January 1, 2009

(Dollars in millions)	
Contractually required payments including interest	\$ 6,205
Less: Nonaccretable difference	(1,357)
<b>Cash flows expected to be collected <sup>(1)</sup></b>	<b>4,848</b>
Less: Accretable yield	(627)
<b>Fair value of loans acquired</b>	<b>\$ 4,221</b>

<sup>(1)</sup>Represents undiscounted expected principal and interest cash flows upon acquisition.

Consumer purchased impaired loans are accounted for on a pool basis. Pooled loans that are modified subsequent to acquisition are reviewed to compare modified contractual cash flows to the purchased impaired loan carrying value. If the present value of the modified cash flows is lower than the carrying value, the loan is removed from the purchased impaired loan pool at its carrying value, as well as any related allowance for loan and lease losses, and classified as a TDR. The carrying value of purchased impaired loan TDRs totaled \$2.3 billion at December 31, 2009 of which \$1.9 billion were on accrual status. The carrying value of these modified loans, net of allowance, was approximately 69 percent of the unpaid principal balance.

The Corporation recorded a \$750 million provision for credit losses establishing a corresponding valuation allowance within the allowance for loan and lease losses for purchased impaired loans at December 31, 2008. The Corporation recorded \$3.7 billion in provision, including a \$3.5 billion addition to the allowance for loan and lease losses, related to the purchased impaired loan portfolio during 2009 due to a decrease in expected principal cash flows. The amount of the allowance for loan and lease losses associated with the purchased impaired loan portfolio was

\$3.9 billion at December 31, 2009, primarily related to Countrywide.

The following table shows activity for the accretable yield on purchased impaired loans acquired from Countrywide and Merrill Lynch for 2009 and 2008. The decrease in expected cash flows during 2009 of \$1.4 billion is primarily attributable to lower expected interest cash flows due to increased credit losses, faster prepayment assumptions and lower rates.

### Accretable Yield Activity

(Dollars in millions)	
<b>Accretable yield, July 1, 2008 <sup>(1)</sup></b>	<b>\$19,549</b>
Accretion	(1,667)
Disposals/transfers	(589)
Reclassifications to nonaccretable difference	(4,433)
<b>Accretable yield, January 1, 2009</b>	<b>12,860</b>
Merrill Lynch balance	627
Accretion	(2,859)
Disposals/transfers <sup>(2)</sup>	(1,482)
Reclassifications to nonaccretable difference	(1,431)
<b>Accretable yield, December 31, 2009</b>	<b>\$ 7,715</b>

<sup>(1)</sup>Represents the accretable yield of loans acquired from Countrywide at July 1, 2008.

<sup>(2)</sup>Includes \$1.2 billion in accretable yield related to loans restructured in TDRs in which the present value of modified cash flows was lower than expectations upon acquisition. These TDRs were removed from the purchased impaired loan pool.

### Loans Held-for-Sale

The Corporation had LHFS of \$43.9 billion and \$31.5 billion at December 31, 2009 and 2008. Proceeds from sales, securitizations and paydowns of LHFS were \$365.1 billion, \$142.1 billion and \$107.1 billion for 2009, 2008 and 2007. Proceeds used for originations and purchases of LHFS were \$369.4 billion, \$127.5 billion and \$123.0 billion for 2009, 2008 and 2007.

## NOTE 7 – Allowance for Credit Losses

The following table summarizes the changes in the allowance for credit losses for 2009, 2008 and 2007.

(Dollars in millions)			
<b>Allowance for loan and lease losses, January 1</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
Loans and leases charged off	\$ 23,071	\$ 11,588	\$ 9,016
Recoveries of loans and leases previously charged off	(35,483)	(17,666)	(7,730)
Net charge-offs	1,795	1,435	1,250
Provision for loan and lease losses	(33,688)	(16,231)	(6,480)
Write-downs on consumer purchased impaired loans <sup>(1)</sup>	48,366	26,922	8,357
Other	(179)	n/a	n/a
	(370)	792	695
<b>Allowance for loan and lease losses, December 31</b>	<b>37,200</b>	<b>23,071</b>	<b>11,588</b>
<b>Reserve for unfunded lending commitments, January 1</b>	<b>421</b>	<b>518</b>	<b>397</b>
Provision for unfunded lending commitments	204	(97)	28
Other	862	—	93
<b>Reserve for unfunded lending commitments, December 31</b>	<b>1,487</b>	<b>421</b>	<b>518</b>
<b>Allowance for credit losses, December 31</b>	<b>\$ 38,687</b>	<b>\$ 23,492</b>	<b>\$ 12,106</b>

<sup>(1)</sup>Represents the write-downs on certain pools of purchased impaired loans that exceed the original purchase accounting adjustments.

n/a = not applicable

The Corporation recorded \$3.7 billion in provision, including a \$3.5 billion addition to the allowance for loan and lease losses, during 2009 specifically for the purchased impaired loan portfolio. The amount of the allowance for loan and lease losses associated with the purchased impaired loan portfolio was \$3.9 billion at December 31, 2009.

In the above table, the 2009 "other" amount under allowance for loan and lease losses includes a \$750 million reduction in the allowance for loan and lease losses related to \$8.5 billion of credit card loans that were exchanged for a \$7.8 billion HTM debt security that was issued by the Corporation's U.S. Credit Card Securitization Trust and retained by the

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Corporation. This reduction was partially offset by a \$340 million increase associated with the reclassification to other assets of the December 31, 2008 amount expected to be reimbursable under residential mortgage cash collateralized synthetic securitizations. The 2008 "other" amount under allowance for loan and lease losses, includes the \$1.2 billion addition of the Countrywide allowance for loan losses as of July 1, 2008. The 2007 "other" amount under allowance for loan and lease losses includes the \$725 million and \$25 million additions of the LaSalle and U.S. Trust Corporation allowance for loan losses as of October 1, 2007 and July 1, 2007.

In the previous table, the 2009 "other" amount under the reserve for unfunded lending commitments represents the fair value of the acquired Merrill Lynch reserve excluding those accounted for under the fair value option, net of accretion and the impact of funding previously unfunded portions. The 2007 "other" amount under the reserve for unfunded lending commitments includes the \$124 million addition of the LaSalle reserve as of October 1, 2007.

### NOTE 8 – Securitizations

The Corporation routinely securitizes loans and debt securities. These securitizations are a source of funding for the Corporation in addition to transferring the economic risk of the loans or debt securities to third parties. In a securitization, various classes of debt securities may be issued and are generally collateralized by a single class of transferred assets which most often consist of residential mortgages, but may also include commercial mortgages, credit card receivables, home equity loans, automobile loans or MBS. The securitized loans may be serviced by the

Corporation or by third parties. With each securitization, the Corporation may retain a portion of the securities, subordinated tranches, interest-only strips, subordinated interests in accrued interest and fees on the securitized receivables or, in some cases, overcollateralization and cash reserve accounts, all of which are referred to as retained interests. These retained interests are recorded in other assets, AFS debt securities, or trading account assets and are generally carried at fair value or amounts that approximate fair value with changes recorded in income or accumulated OCI, or are recorded as HTM debt securities and carried at amortized cost. Changes in the fair value of credit card related interest-only strips are recorded in card income. In addition, the Corporation may enter into derivatives with the securitization trust to mitigate the trust's interest rate or foreign currency risk. These derivatives are entered into at market terms and are generally senior in payment. The Corporation also may serve as the underwriter and distributor of the securitization, serve as the administrator of the trust, and from time to time, make markets in securities issued by the securitization trusts.

### First Lien Mortgage-related Securitizations

As part of its mortgage banking activities, the Corporation securitizes a portion of the residential mortgage loans it originates or purchases from third parties in conjunction with or shortly after loan closing or purchase. In addition, the Corporation may, from time to time, securitize commercial mortgages and first lien residential mortgages that it originates or purchases from other entities.

The following table summarizes selected information related to mortgage securitizations at and for the years ended December 31, 2009 and 2008.

	Residential Mortgage									
	Agency		Non-Agency						Commercial Mortgage	
	2009	2008	Prime		Subprime		Alt-A		2009	2008
(Dollars in millions)										
<b>For the Year Ended December 31</b>										
Cash proceeds from new securitizations <sup>(1)</sup>	\$ 346,448	\$ 123,653	\$ –	\$ 1,038	\$ –	\$ 1,377	\$ –	\$ –	\$ 313	\$ 3,557
Gains on securitizations <sup>(2,3)</sup>	73	25	–	2	–	24	–	–	–	29
Cash flows received on residual interests	–	–	25	6	71	33	5	4	23	–
<b>At December 31</b>										
Principal balance outstanding <sup>(4)</sup>	1,255,650	1,123,916	81,012	111,683	83,065	57,933	147,072	136,027	65,397	55,403
Residual interests held	–	–	9	–	2	13	–	–	48	7
Senior securities held <sup>(5, 6)</sup> :										
Trading account assets	\$ 2,295	\$ 1,308	\$ 201	\$ 367	\$ 12	\$ –	\$ 431	\$ 278	\$ 469	\$ 168
Available-for-sale debt securities	13,786	12,507	3,845	4,559	188	121	561	569	1,215	16
<b>Total senior securities held</b>	<b>\$ 16,081</b>	<b>\$ 13,815</b>	<b>\$ 4,046</b>	<b>\$ 4,926</b>	<b>\$ 200</b>	<b>\$ 121</b>	<b>\$ 992</b>	<b>\$ 847</b>	<b>\$ 1,684</b>	<b>\$ 184</b>
Subordinated securities held <sup>(5, 7)</sup> :										
Trading account assets	\$ –	\$ –	\$ –	\$ 23	\$ –	\$ 3	\$ –	\$ 1	\$ 122	\$ 136
Available-for-sale debt securities	–	–	13	20	22	1	4	17	23	–
<b>Total subordinated securities held</b>	<b>\$ –</b>	<b>\$ –</b>	<b>\$ 13</b>	<b>\$ 43</b>	<b>\$ 22</b>	<b>\$ 4</b>	<b>\$ 4</b>	<b>\$ 18</b>	<b>\$ 145</b>	<b>\$ 136</b>

<sup>(1)</sup>The Corporation sells residential mortgage loans to GSEs in the normal course of business and receives MBS in exchange which may then be sold into the market to third party investors for cash proceeds.

<sup>(2)</sup>Net of hedges

<sup>(3)</sup>Substantially all of the residential mortgages securitized are initially classified as LHFS and accounted for under the fair value option. As such, gains are recognized on these LHFS prior to securitization. During 2009 and 2008, the Corporation recognized \$5.5 billion and \$1.6 billion of gains on these LHFS.

<sup>(4)</sup>Generally, the Corporation as transferor will service the sold loans and thus recognize a MSR upon securitization.

<sup>(5)</sup>As a holder of these securities, the Corporation receives scheduled interest and principal payments. During 2009 and 2008, there were no significant other-than-temporary impairment losses recorded on those securities classified as AFS debt securities.

<sup>(6)</sup>At December 31, 2009 and 2008, substantially all of the residential mortgage held senior securities were valued using quoted market prices. At December 31, 2009, substantially all of the commercial mortgage held senior securities were valued using quoted market prices while at December 31, 2008 substantially all were valued using model valuations.

<sup>(7)</sup>At December 31, 2009, substantially all of the residential mortgage held subordinated securities and all of the commercial mortgage held subordinated securities were valued using quoted market prices while at December 31, 2008 substantially all were valued using model valuations.

In addition to the amounts included in the table above, during 2009, the Corporation purchased \$49.2 billion of MBS from third parties and res securitized them compared to \$12.2 billion during 2008. Net gains,

which include net interest income earned during the holding period, totaled \$213 million and \$80 million in 2009 and 2008. At December 31, 2009 and 2008, the Corporation retained \$543 million

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and \$1.0 billion of the senior securities issued in these transactions which were valued using quoted market prices and recorded in trading account assets.

The Corporation has consumer MSR from the sale or securitization of mortgage loans. Servicing fee and ancillary fee income on consumer mortgage loans serviced, including securitizations where the Corporation has continuing involvement, were \$6.2 billion and \$3.5 billion in 2009 and 2008. Servicing advances on consumer mortgage loans, including securitizations where the Corporation has continuing involvement, were \$19.3 billion and \$8.8 billion at December 31, 2009 and 2008. In addition, the Corporation has retained commercial MSRs from the sale or securitization of commercial mortgage loans. Servicing fee and ancillary fee income on commercial mortgage loans serviced, including securitizations where the Corporation has continuing involvement, were \$49 million and \$40 million in 2009 and 2008. Servicing advances on commercial mortgage loans, including securitizations where the Corporation has continuing involvement, were \$109 million and \$14 million at December 31, 2009 and 2008. For more information on MSRs, see *Note 22 – Mortgage Servicing Rights*.

The Corporation sells mortgage loans and, in the past sold home equity loans, with various representations and warranties related to, among other things, the ownership of the loan, validity of the lien securing the loan, absence of delinquent taxes or liens against the property securing the loan, the process used in selecting the loans for inclusion in a transaction, the loan's compliance with any applicable loan criteria established by the buyer, and the loan's compliance with applicable local, state and federal laws. Under the Corporation's representations and warranties, the Corporation may be required to repurchase the mortgage loans with the identified defects, indemnify or provide other recourse to the investor or insurer. In such cases, the Corporation bears any subsequent credit loss on the mortgage loans. The Corporation's representations and warranties are generally not subject to stated limits and extend over the life of the loan. However, the Corporation's contractual liability arises only if there is a breach of the representations and warranties that materially and adversely affects the interest of the investor or pursuant to such other standard established by the terms of the related selling agreement. The Corporation attempts to limit its risk of incurring these losses by structuring its operations to ensure consistent production of quality mortgages and servicing those mortgages at levels that meet secondary mortgage market standards. In addition, certain of the Corporation's securitizations include corporate guarantees that are contracts written to protect purchasers of the loans from credit losses up to a specified amount. The estimated losses to be absorbed under the guarantees are recorded when the Corporation sells the loans with guarantees. The methodology used to estimate the liability for representations and warranties considers a variety of factors and is a function of the representations and warranties given, estimated defaults, historical loss experience and probability that the Corporation will be required to repurchase the loan. The Corporation records its liability for representations and warranties, and corporate guarantees in accrued expenses and other liabilities and records the related expense in mortgage banking income. During 2009 and 2008, the Corporation recorded representations and warranties expense of \$1.9 billion and \$246 million. During 2009 and 2008, the Corporation repurchased \$1.5 billion and \$448 million of loans from first lien securitization trusts under the Corporation's representations and warranties and corporate guarantees and paid \$730 million and \$77 million to indemnify the investors or insurers. In addition,

during 2009, the Corporation repurchased \$13.1 billion of loans from first lien securitization trusts as a result of modifications, loan delinquencies or optional clean-up calls.

### Credit Card Securitizations

The Corporation securitizes originated and purchased credit card loans. The Corporation's continuing involvement includes servicing the receivables, retaining an undivided interest (the "seller's interest") in the receivables, and holding certain retained interests in credit card securitization trusts including senior and subordinated securities, interest-only strips, discount receivables, subordinated interests in accrued interest and fees on the securitized receivables and cash reserve accounts. The securitization trusts' legal documents require the Corporation to maintain a minimum seller's interest of four to five percent, and at December 31, 2009, the Corporation is in compliance with this requirement. The seller's interest in the trusts represents the Corporation's undivided interest in the receivables transferred to the trust and is *pari passu* to the investors' interest. The seller's interest is not represented by security certificates, is carried at historical cost, and is classified in loans on the Corporation's Consolidated Balance Sheet. At December 31, 2009 and 2008, the Corporation had \$10.8 billion and \$14.8 billion of seller's interest.

As specifically permitted by the terms of the transaction documents, and in an effort to address the recent decline in the excess spread due to the performance of the underlying credit card receivables in the U.S. Credit Card Securitization Trust, an additional subordinated security with a stated interest rate of zero percent was issued by the trust to the Corporation during 2009 (the Class D security). As the issuance was not treated as a sale, the Class D security was recorded at \$7.8 billion representing the carry-over basis of the seller's interest which is comprised of the \$8.5 billion book value of the loans exchanged less the associated \$750 million allowance for loan and lease losses, and was classified as HTM. Future principal and interest cash flows on the loans exchanged for the Class D security will be returned to the Corporation through its ownership of the Class D security and the U.S. Credit Card Securitization Trust's residual interest. Income on this residual interest is presently recognized in card income as cash is received. The Class D security is subject to review for impairment at least on a quarterly basis. As the Corporation expects to receive all of the contractually due cash flows on the Class D security, there was no other-than-temporary impairment at December 31, 2009. In addition, as permitted by the transaction documents, the Corporation specified that from March 1, 2009 through September 30, 2009 a percentage of new receivables transferred to the trust will be deemed "discount receivables" and collections thereon will be added to finance charges which have increased the yield in the trust. Through the designation of these newly transferred receivables as discount receivables, the Corporation has subordinated a portion of its seller's interest to the investors' interest. The discount receivables were initially accounted for at the carry-over basis of the seller's interest and are subject to impairment review at least on a quarterly basis. No impairment on the discount receivables has been recognized as of December 31, 2009. During 2009, the Corporation extended this agreement through March 31, 2010. The carrying amount and fair value of the discount receivables were both \$3.6 billion, and the carrying amount and fair value of the retained Class D security was \$6.6 billion and \$6.4 billion at December 31, 2009. These actions did not have a significant impact on the Corporation's results of operations.

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The following table summarizes selected information related to credit card securitizations at and for the year ended December 31, 2009 and 2008.

(Dollars in millions)	Credit Card	
	2009	2008
<b>For the Year Ended December 31</b>		
Cash proceeds from new securitizations	\$ 650	\$ 20,148
Gains on securitizations	—	81
Collections reinvested in revolving period securitizations	133,771	162,332
Cash flows received on residual interests	5,512	5,771
<b>At December 31</b>		
Principal balance outstanding <sup>(1)</sup>	103,309	114,141
Senior securities held <sup>(2)</sup>	7,162	4,965
Subordinated securities held <sup>(3)</sup>	7,993	1,837
Other subordinated or residual interests held <sup>(4)</sup>	5,195	2,233

<sup>(1)</sup>Principal balance outstanding represents the principal balance of credit card receivables that have been legally isolated from the Corporation including those loans represented by the seller's interest that are still held on the Corporation's Consolidated Balance Sheet.

<sup>(2)</sup>At December 31, 2009 and 2008, held senior securities issued by credit card securitization trusts were valued using quoted market prices and substantially all were classified as AFS debt securities and there were no other-than-temporary impairment losses recorded on those securities.

<sup>(3)</sup>At December 31, 2009, the \$6.6 billion Class D security was carried at amortized cost and classified as HTM debt securities and \$1.4 billion of other held subordinated securities were valued using quoted market prices and were classified as AFS debt securities. At December 31, 2008, all of the held subordinated securities were valued using quoted market prices and classified as AFS debt securities.

<sup>(4)</sup>Other subordinated and residual interests include discount receivables, subordinated interests in accrued interest and fees on the securitized receivables, and cash reserve accounts and interest-only strips which are carried at fair value or amounts that approximate fair value. The residual interests were valued using model valuations. Residual interests associated with the Class D and discount receivables transactions have not been recognized.

Economic assumptions are used in measuring the fair value of certain residual interests that continue to be held by the Corporation. The expected loss rate assumption used to measure the discount receivables at December 31, 2009 was 13 percent. A 10 percent and 20 percent adverse change to the expected loss rate would have caused a decrease of \$280 million and \$1.2 billion to the fair value of the discount receivables at December 31, 2009. The discount rate assumption used to measure the Class D security at December 31, 2009 was six percent. A 100 bps and 200 bps increase in the discount rate would have caused a decrease of \$116 million and \$228 million to the fair value of the Class D security. Conversely, a 100 bps and 200 bps decrease in the discount rate would have caused an increase of \$120 million and \$245 million to the fair value of the Class D security. These sensitivities are hypothetical and should be used with caution. As the amounts indicate, changes in fair value based on variations in assumptions generally cannot be extrapolated because the relationship of the change in assumption to the change in fair value may not be linear.

At December 31, 2009 and 2008, there were no recognized servicing assets or liabilities associated with any of the credit card securitization transactions. The Corporation recorded \$2.0 billion and \$2.1 billion in servicing fees related to credit card securitizations during 2009 and 2008.

During 2008, the Corporation became one of the liquidity support providers for the Corporation's commercial paper program that obtains financing by issuing tranches of commercial paper backed by credit card receivables to third-party investors from a trust sponsored by the Corporation. During 2009, the Corporation became the sole liquidity support provider for the program and increased its liquidity commitment from \$946 million to \$2.3 billion. The maximum amount of commercial paper that can be issued under this program given the current level of liquidity support is \$8.8 billion, all of which was outstanding at December 31, 2009 and 2008. If certain conditions set forth in the legal documents governing the trust are not met, such as not being able to reissue the commercial paper due to market illiquidity, the commercial paper maturity dates will be extended to 390 days from the original issuance date. This

extension would cause the outstanding commercial paper to convert to an interest-bearing note and subsequent credit card receivable collections would be applied to the outstanding note balance. If these notes are still outstanding at the end of the extended maturity period, the liquidity commitment obligates the Corporation and other liquidity support providers, if any, to purchase maturity notes from the trust in order to retire the interest-bearing notes held by investors. As a maturity note holder, the Corporation would be entitled to the remaining cash flows from the collateralizing credit card receivables. At December 31, 2009 and 2008, none of the commercial paper had been extended and there were no maturity notes outstanding. Due to illiquidity in the marketplace, the Corporation held \$7.1 billion and \$5.0 billion of the outstanding commercial paper as of December 31, 2009 and 2008, which is classified in AFS debt securities on the Corporation's Consolidated Balance Sheet.

### Other Securitizations

The Corporation also maintains interests in other securitization trusts to which the Corporation transferred assets including municipal bonds, automobile loans and home equity loans. These retained interests include senior and subordinated securities and residual interests. During 2009, the Corporation had cash proceeds from new securitizations of municipal bonds of \$664 million as well as cash flows received on residual interests of \$316 million. At December 31, 2009, the principal balance outstanding for municipal bonds securitization trusts was \$6.9 billion, senior securities held were \$122 million and residual interests held were \$203 million. The residual interests were valued using model valuations and substantially all are classified as derivative assets. At December 31, 2009, all of the held senior securities issued by municipal bond securitization trusts were valued using quoted market prices and classified as trading account assets.

During 2009, the Corporation securitized \$9.0 billion of automobile loans in a transaction that was structured as a secured borrowing under applicable accounting guidance and the loans are therefore recorded on the Corporation's Consolidated Balance Sheet and excluded from the following table.

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There were no new securitizations of home equity loans during 2009 and 2008. The following table summarizes selected information related to home equity and automobile loan securitizations at and for the year ended December 31, 2009 and 2008.

	Home Equity		Automobile	
	2009	2008	2009	2008
<b>(Dollars in millions)</b>				
<b>For the Year Ended December 31</b>				
Cash proceeds from new securitizations	\$ –	\$ –	\$ –	\$ 741
Losses on securitizations <sup>(1)</sup>	–	–	–	(31)
Collections reinvested in revolving period securitizations	177	235	–	–
Repurchases of loans from trust <sup>(2)</sup>	268	128	298	184
Cash flows received on residual interests	35	27	52	–
<b>At December 31</b>				
Principal balance outstanding	46,282	34,169	2,656	5,385
Senior securities held <sup>(3, 4)</sup>	15	–	2,119	4,102
Subordinated securities held <sup>(5)</sup>	48	3	195	383
Residual interests held <sup>(6)</sup>	100	93	83	84

<sup>(1)</sup>Net of hedges

<sup>(2)</sup>Repurchases of loans from the trust for home equity loans are typically a result of the Corporation's representations and warranties, modifications or the exercise of an optional clean-up call. In addition, during 2009 and 2008, the Corporation paid \$141 million and \$34 million to indemnify the investor or insurer under the representations and warranties, and corporate guarantees. For further information regarding representations and warranties, and corporate guarantees, see the First Lien Mortgage-related Securitizations discussion. Repurchases of automobile loans during 2009 and 2008 were due to the exercise of an optional clean-up call.

<sup>(3)</sup>As a holder of these securities, the Corporation receives scheduled interest and principal payments. During 2009, there were no other-than-temporary impairment losses recorded on those securities classified as AFS debt securities.

<sup>(4)</sup>At December 31, 2009, all of the held senior securities issued by the home equity securitization trusts were valued using quoted market prices and classified as trading account assets. At December 31, 2009 and 2008, substantially all of the held senior securities issued by the automobile securitization trusts were valued using quoted market prices and classified as AFS debt securities.

<sup>(5)</sup>At December 31, 2009 and 2008, substantially all of the held subordinated securities issued by the home equity securitization trusts were valued using model valuations and classified as AFS debt securities. At December 31, 2009 and 2008, substantially all of the held subordinated securities issued by the automobile securitization trusts were valued using quoted market prices and classified as AFS debt securities.

<sup>(6)</sup>Residual interests include the residual asset, overcollateralization and cash reserve accounts, which are carried at fair value or amounts that approximate fair value. The residual interests were derived using model valuations and substantially all are classified in other assets.

Under the terms of the Corporation's home equity securitizations, advances are made to borrowers when they draw on their lines of credit and the Corporation is reimbursed for those advances from the cash flows in the securitization. During the revolving period of the securitization, this reimbursement normally occurs within a short period after the advance. However, when the securitization transaction has begun a rapid amortization period, reimbursement of the Corporation's advance occurs only after other parties in the securitization have received all of the cash flows to which they are entitled. This has the effect of extending the time period for which the Corporation's advances are outstanding. In particular, if loan losses requiring draws on monoline insurers' policies, which protect the bondholders in the securitization, exceed a specified threshold or duration, the Corporation may not receive reimbursement for all of the funds advanced to borrowers, as the senior bondholders and the monoline insurers have priority for repayment.

The Corporation evaluates all of its home equity securitizations for their potential to experience a rapid amortization event by estimating the amount and timing of future losses on the underlying loans, the excess spread available to cover such losses and by evaluating any estimated shortfalls in relation to contractually defined triggers. A maximum funding obligation attributable to rapid amortization cannot be calculated as a home equity borrower has the ability to pay down and redraw balances. At December 31, 2009 and 2008, home equity securitization transactions in rapid amortization had \$14.1 billion and \$13.1 billion of trust certificates outstanding. This amount is significantly greater than the amount the Corporation expects to fund. At December 31, 2009, an additional \$1.1 billion of trust certificates outstanding pertain to home equity securitization transactions that are expected to enter rapid amortization during the next 24 months. The charges that will ultimately be recorded as a result of the rapid amortization events are dependent on the performance of the loans, the amount of subsequent draws, and the timing of related cash flows. At December 31, 2009 and 2008, the reserve for losses on expected future draw obligations on the home equity securitizations in or expected to be in rapid amortization was \$178 million and \$345 million.

The Corporation has consumer MSR's from the sale or securitization of home equity loans. The Corporation recorded \$128 million and \$78 million of servicing fee income related to home equity securitizations during 2009 and 2008. For more information on MSR's, see *Note 22 – Mortgage Servicing Rights*. At December 31, 2009 and 2008, there were no recognized servicing assets or liabilities associated with any of the automobile securitization transactions. The Corporation recorded \$43 million and \$30 million in servicing fees related to automobile securitizations during 2009 and 2008.

The Corporation provides financing to certain entities under asset-backed financing arrangements. These entities are controlled and consolidated by third parties. At December 31, 2009, the principal balance outstanding for these asset-backed financing arrangements was \$10.4 billion, the maximum loss exposure was \$6.8 billion, and on-balance sheet assets were \$6.7 billion which are primarily recorded in loans and leases. The total cash flows for 2009 were \$491 million and are primarily related to principal and interest payments received.

## NOTE 9 – Variable Interest Entities

The Corporation utilizes SPEs in the ordinary course of business to support its own and its customers' financing and investing needs. These SPEs are typically structured as VIEs and are thus subject to consolidation by the reporting enterprise that absorbs the majority of the economic risks and rewards of the VIE. To determine whether it must consolidate a VIE, the Corporation qualitatively analyzes the design of the VIE to identify the creators of variability within the VIE, including an assessment as to the nature of the risks that are created by the assets and other contractual arrangements of the VIE, and identifies whether it will absorb a majority of that variability.

In addition, the Corporation uses VIEs such as trust preferred securities trusts in connection with its funding activities, as described in more detail in *Note 13 – Long-term Debt*. The Corporation also uses VIEs in the form of synthetic securitization vehicles to mitigate a portion of the credit risk on its residential mortgage loan portfolio as described in

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**Note 6 – Outstanding Loans and Leases.** The Corporation has also provided support to or has loss exposure resulting from its involvement with other VIEs, including certain cash funds managed within *GWIM*, as described in more detail in *Note 14 – Commitments and Contingencies*. These VIEs are not included in the tables below.

The table below presents the assets and liabilities of VIEs that are consolidated on the Corporation's Consolidated Balance Sheet at December 31, 2009, total assets of consolidated VIEs at December 31, 2008, and the Corporation's maximum exposure to loss resulting from its

involvement with consolidated VIEs as of December 31, 2009 and 2008. The Corporation's maximum exposure to loss is based on the unlikely event that all of the assets in the VIEs become worthless and incorporates not only potential losses associated with assets recorded on the Corporation's Consolidated Balance Sheet but also potential losses associated with off-balance sheet commitments such as unfunded liquidity commitments and other contractual arrangements. The Corporation's maximum exposure to loss does not include losses previously recognized through write-downs of assets.

### Consolidated VIEs

(Dollars in millions)	Multi-Seller Conduits	Loan and Other Investment Vehicles	CDOs	Leveraged Lease Trusts	Other Vehicles	Total
<b>Consolidated VIEs, December 31, 2009</b>						
Maximum loss exposure	\$ 9,388	\$ 8,265	\$3,863	\$ 5,634	\$ 1,463	<b>\$28,613</b>
Consolidated Assets <sup>(1)</sup>						
Trading account assets	\$ –	\$ 145	\$2,785	\$ –	\$ 548	<b>\$ 3,478</b>
Derivative assets	–	579	–	–	830	<b>1,409</b>
Available-for-sale debt securities	3,492	1,799	1,414	–	23	<b>6,728</b>
Held-to-maturity debt securities	2,899	–	–	–	–	<b>2,899</b>
Loans and leases	318	11,752	–	5,650	–	<b>17,720</b>
All other assets	4	3,087	–	–	184	<b>3,275</b>
<b>Total</b>	<b>\$ 6,713</b>	<b>\$ 17,362</b>	<b>\$4,199</b>	<b>\$ 5,650</b>	<b>\$ 1,585</b>	<b>\$35,509</b>
Consolidated Liabilities <sup>(1)</sup>						
Commercial paper and other short-term borrowings	\$ 6,748	\$ –	\$ –	\$ –	\$ 987	<b>\$ 7,735</b>
All other liabilities	–	12,127	2,753	17	163	<b>15,060</b>
<b>Total</b>	<b>\$ 6,748</b>	<b>\$ 12,127</b>	<b>\$2,753</b>	<b>\$ 17</b>	<b>\$ 1,150</b>	<b>\$22,795</b>
<b>Consolidated VIEs, December 31, 2008</b>						
Maximum loss exposure	\$ 11,304	\$ 3,189	\$2,443	\$ 5,774	\$ 1,497	<b>\$24,207</b>
Total assets of VIEs <sup>(1)</sup>	9,368	4,449	2,443	5,829	1,631	<b>23,720</b>

<sup>(1)</sup>Total assets and liabilities of consolidated VIEs are reported net of intercompany balances that have been eliminated in consolidation.

At December 31, 2009, the Corporation's total maximum loss exposure to consolidated VIEs was \$28.6 billion, which includes \$5.9 billion attributable to the addition of Merrill Lynch, primarily loan and other investment vehicles and CDOs.

The table below presents total assets of unconsolidated VIEs in which the Corporation holds a significant variable interest and Corporation-sponsored unconsolidated VIEs in which the Corporation holds a variable interest, even if not significant, at December 31, 2009 and 2008. The table also presents the Corporation's maximum exposure to loss resulting from its involvement with these VIEs at December 31, 2009 and 2008. The Corporation's maximum exposure to loss is based on the unlikely event that all of the assets in the VIEs become worthless and

incorporates not only potential losses associated with assets recorded on the Corporation's Consolidated Balance Sheet but also potential losses associated with off-balance sheet commitments such as unfunded liquidity commitments and other contractual arrangements. The Corporation's maximum exposure to loss does not include losses previously recognized through write-downs of assets. Certain QSPEs, principally municipal bond trusts, in which the Corporation has continuing involvement are discussed in *Note 8 – Securitizations* and are also included in the table. Assets and liabilities of unconsolidated VIEs recorded on the Corporation's Consolidated Balance Sheet at December 31, 2009 are also summarized below.

### Unconsolidated VIEs

(Dollars in millions)	Multi-Seller Conduits	Loan and Other Investment Vehicles	Real Estate Investment Vehicles	Municipal Bond Trusts	CDOs	Customer Vehicles	Other Vehicles	Total
<b>Unconsolidated VIEs, December 31, 2009</b>								
Maximum loss exposure	\$ 25,135	\$ 5,571	\$ 4,812	\$ 10,143	\$ 6,987	\$ 9,904	\$ 1,232	<b>\$ 63,784</b>
Total assets of VIEs	13,893	11,507	4,812	12,247	56,590	13,755	1,232	<b>114,036</b>
On-balance sheet assets								
Trading account assets	\$ –	\$ 216	\$ –	\$ 191	\$ 1,253	\$ 1,118	\$ –	<b>\$ 2,778</b>
Derivative assets	–	128	–	167	2,085	4,708	62	<b>7,150</b>
Available-for-sale debt securities	–	–	–	–	368	–	–	<b>368</b>
Loans and leases	318	933	–	–	–	–	–	<b>1,251</b>
All other assets	60	4,287	4,812	–	166	–	–	<b>9,325</b>
<b>Total</b>	<b>\$ 378</b>	<b>\$ 5,564</b>	<b>\$ 4,812</b>	<b>\$ 358</b>	<b>\$ 3,872</b>	<b>\$ 5,826</b>	<b>\$ 62</b>	<b>\$ 20,872</b>
On-balance sheet liabilities								
Derivative liabilities	\$ –	\$ 139	\$ –	\$ 287	\$ 781	\$ 154	\$ 54	<b>\$ 1,415</b>
All other liabilities	–	581	1,460	–	–	856	–	<b>2,897</b>
<b>Total</b>	<b>\$ –</b>	<b>\$ 720</b>	<b>\$ 1,460</b>	<b>\$ 287</b>	<b>\$ 781</b>	<b>\$ 1,010</b>	<b>\$ 54</b>	<b>\$ 4,312</b>
<b>Unconsolidated VIEs, December 31, 2008</b>								
Maximum loss exposure	\$ 42,046	\$ 2,789	\$ 5,696	\$ 7,145	\$ 2,383	\$ 5,741	\$ 4,170	<b>\$ 69,970</b>
Total assets of VIEs	27,922	5,691	5,980	7,997	2,570	6,032	4,211	<b>60,403</b>

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At December 31, 2009, the Corporation's total maximum loss exposure to unconsolidated VIEs was \$63.8 billion, which includes \$19.7 billion attributable to the addition of Merrill Lynch, primarily customer vehicles, municipal bond trusts and CDOs.

Except as described below, the Corporation has not provided financial or other support to consolidated or unconsolidated VIEs that it was not previously contractually required to provide, nor does it intend to do so.

### Multi-seller Conduits

The Corporation administers four multi-seller conduits which provide a low-cost funding alternative to its customers by facilitating their access to the commercial paper market. These customers sell or otherwise transfer assets to the conduits, which in turn issue short-term commercial paper that is rated high-grade and is collateralized by the underlying assets. The Corporation receives fees for providing combinations of liquidity and SBLCs or similar loss protection commitments to the conduits. The Corporation also receives fees for serving as commercial paper placement agent and for providing administrative services to the conduits. The Corporation's liquidity commitments are collateralized by various classes of assets and incorporate features such as overcollateralization and cash reserves that are designed to provide credit support to the conduits at a level equivalent to investment grade as determined in accordance with internal risk rating guidelines. Third parties participate in a small number of the liquidity facilities on a pari passu basis with the Corporation.

The Corporation determines whether it must consolidate a multi-seller conduit based on an analysis of projected cash flows using Monte Carlo simulations which are driven principally by credit risk inherent in the assets of the conduits. Interest rate risk is not included in the cash flow analysis because the conduits are not designed to absorb and pass along interest rate risk to investors. Instead, the assets of the conduits pay variable rates of interest based on the conduits' funding costs. The assets of the conduits typically carry a risk rating of AAA to BBB based on the Corporation's current internal risk rating equivalent which reflects structural enhancements of the assets including third party insurance. Projected loss calculations are based on maximum binding commitment amounts, probability of default based on the average one-year Moody's Corporate Finance transition table, and recovery rates of 90 percent, 65 percent and 45 percent for senior, mezzanine and subordinate exposures. Approximately 98 percent of commitments in the unconsolidated conduits and 69 percent of commitments in the consolidated conduit are supported by senior exposures. Certain assets funded by one of the unconsolidated conduits benefit from embedded credit enhancement provided by the Corporation. Credit risk created by these assets is deemed to be credit risk of the Corporation which is absorbed by third party investors.

The Corporation does not consolidate three conduits as it does not expect to absorb a majority of the variability created by the credit risk of the assets held in the conduits. On a combined basis, these three conduits have issued approximately \$147 million of capital notes and equity interests to third parties, \$142 million of which was outstanding at December 31, 2009. These instruments will absorb credit risk on a first loss basis. The Corporation consolidates the fourth conduit which has not issued capital notes or equity interests to third parties.

At December 31, 2009, the assets of the consolidated conduit, which consist primarily of debt securities, and the conduit's unfunded liquidity commitments were mainly collateralized by \$2.2 billion in credit card loans (25 percent), \$1.1 billion in student loans (12 percent), \$1.0 billion in auto loans (11 percent), \$680 million in trade receivables (eight percent) and \$377 million in equipment loans (four percent). In addition, \$3.0 billion of the Corporation's liquidity commitments were collateralized by projected cash flows from long-term contracts (e.g., television broad - -

cast contracts, stadium revenues and royalty payments) which, as mentioned above, incorporate features that provide credit support. Amounts advanced under these arrangements will be repaid when cash flows due under the long-term contracts are received. Approximately 74 percent of this exposure is insured. At December 31, 2009, the weighted-average life of assets in the consolidated conduit was estimated to be 3.4 years and the weighted-average maturity of commercial paper issued by this conduit was 33 days. Assets of the Corporation are not available to pay creditors of the consolidated conduit except to the extent the Corporation may be obligated to perform under the liquidity commitments and SBLCs. Assets of the consolidated conduit are not available to pay creditors of the Corporation.

The Corporation's liquidity commitments to the unconsolidated conduits, all of which were unfunded at December 31, 2009, pertained to facilities that were mainly collateralized by \$4.4 billion in trade receivables (18 percent), \$3.9 billion in auto loans (16 percent), \$3.5 billion in credit card loans (15 percent), \$2.6 billion in student loans (11 percent), and \$2.0 billion in equipment loans (eight percent). In addition, \$5.6 billion (24 percent) of the Corporation's commitments were collateralized by the conduits' short-term lending arrangements with investment funds, primarily real estate funds, which, as mentioned above, incorporate features that provide credit support. Amounts advanced under these arrangements are secured by a diverse group of high quality equity investors. Outstanding advances under these facilities will be repaid when the investment funds issue capital calls. At December 31, 2009, the weighted-average life of assets in the unconsolidated conduits was estimated to be 2.4 years and the weighted-average maturity of commercial paper issued by these conduits was 37 days. At December 31, 2009 and 2008, the Corporation did not hold any commercial paper issued by the multi-seller conduits other than incidentally and in its role as a commercial paper dealer.

The Corporation's liquidity, SBLCs and similar loss protection commitments obligate it to purchase assets from the conduits at the conduits' cost. Subsequent realized losses on assets purchased from the unconsolidated conduits would be reimbursed from restricted cash accounts that were funded by the issuance of capital notes and equity interests to third party investors. The Corporation would absorb losses in excess of such amounts. If a conduit is unable to re-issue commercial paper due to illiquidity in the commercial paper markets or deterioration in the asset portfolio, the Corporation is obligated to provide funding subject to the following limitations. The Corporation's obligation to purchase assets under the SBLCs and similar loss protection commitments is subject to a maximum commitment amount which is typically set at eight to 10 percent of total outstanding commercial paper. The Corporation's obligation to purchase assets under the liquidity agreements, which comprise the remainder of its exposure, is generally limited to the amount of non-defaulted assets. Although the SBLCs are unconditional, the Corporation is not obligated to fund under other liquidity or loss protection commitments if the conduit is the subject of a voluntary or involuntary bankruptcy proceeding.

One of the unconsolidated conduits holds CDO investments with aggregate outstanding funded amounts of \$318 million and \$388 million and unfunded commitments of \$225 million and \$162 million at December 31, 2009 and December 31, 2008. At December 31, 2009, \$190 million of the conduit's total exposure pertained to an insured CDO which holds middle market loans. The underlying collateral of the remaining CDO investments includes \$33 million of subprime mortgages and other investment grade securities. All of the unfunded commitments are revolving commitments to the insured CDO. During 2009 and 2008, these investments were downgraded or threatened with a downgrade by the ratings agencies. In accordance with the terms of the Corporation's



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existing liquidity obligations, the conduit had transferred the funded investments to the Corporation in a transaction that was accounted for as a financing transaction due to the conduit's continuing exposure to credit losses of the investments. As a result of the transfer, the CDO investments no longer serve as collateral for commercial paper issuances.

The transfers were performed in accordance with existing contractual requirements. The Corporation did not provide support to the conduit that was not contractually required nor does it intend to provide support in the future that is not contractually required. The Corporation performs reconsideration analyses for the conduit at least quarterly, and the CDO investments are included in these analyses. The Corporation will be reimbursed for any realized credit losses on these CDO investments up to the amount of capital notes issued by the conduit which totaled \$116 million at December 31, 2009 and \$66 million at December 31, 2008. Any realized losses on the CDO investments that are caused by market illiquidity or changes in market rates of interest will be borne by the Corporation. The Corporation will also bear any credit-related losses in excess of the amount of capital notes issued by the conduit. The Corporation's maximum exposure to loss from the CDO investments was \$428 million at December 31, 2009 and \$484 million at December 31, 2008, based on the combined funded amounts and unfunded commitments less the amount of cash proceeds from the issuance of capital notes which are held in a segregated account.

There were no other significant downgrades or losses recorded in earnings from write-downs of assets held by any of the conduits during 2009.

The liquidity commitments and SBLCs provided to unconsolidated conduits are included in *Note 14 – Commitments and Contingencies*.

### **Loan and Other Investment Vehicles**

Loan and other investment vehicles at December 31, 2009 and 2008 include loan securitization trusts that did not meet the requirements to be QSPEs, loan financing arrangements, and vehicles that invest in financial assets, typically debt securities or loans. The Corporation determines whether it is the primary beneficiary of and must consolidate these investment vehicles based principally on a determination as to which party is expected to absorb a majority of the credit risk or market risk created by the assets of the vehicle. Typically, the party holding subordinated or residual interests in a vehicle will absorb a majority of the risk.

Certain loan securitization trusts were designed to meet QSPE requirements but fail to do so, typically as a result of derivatives entered into by the trusts that pertain to interests ultimately retained by the Corporation due to its inability to sell such interests as a result of illiquidity in the market. The assets have been pledged to the investors in the trusts. The Corporation consolidates these loan securitization trusts if it retains the residual interest in the trust and expects to absorb a majority of the variability in cash flows created by the loans held in the trust. Investors in consolidated loan securitization trusts have no recourse to the general credit of the Corporation as their investments are repaid solely from the assets of the vehicle.

The Corporation uses financing arrangements with SPEs administered by third parties to obtain low-cost funding for certain financial assets, principally commercial loans and debt securities. The third party SPEs, typically commercial paper conduits, hold the specified assets subject to total return swaps with the Corporation. If the assets are transferred to the third party from the Corporation, the transfer is accounted for as a secured borrowing. If the third party commercial paper conduit issues a discrete series of commercial paper whose only source of repayment is the specified asset and the total return swap with the Corporation, thus creating a "silo" structure within the conduit, the Corporation consolidates that silo.

The Corporation has made investments in alternative investment funds that are considered to be VIEs because they do not have sufficient legal form equity at risk to finance their activities or the holders of the equity at risk do not have control over the activities of the vehicles. The Corporation consolidates these funds if it holds a majority of the investment in the fund. The Corporation also sponsors funds that provide a guaranteed return to investors at the maturity of the fund. This guarantee may include a guarantee of the return of an initial investment or the initial investment plus an agreed upon return depending on the terms of the fund. Investors in certain of these funds have recourse to the Corporation to the extent that the value of the assets held by the funds at maturity is less than the guaranteed amount. The Corporation consolidates these funds if the Corporation's guarantee is expected to absorb a majority of the variability created by the assets of the fund.

### **Real Estate Investment Vehicles**

The Corporation's investment in real estate investment vehicles at December 31, 2009 and 2008 consisted principally of limited partnership investments in unconsolidated limited partnerships that finance the construction and rehabilitation of affordable rental housing. The Corporation earns a return primarily through the receipt of tax credits allocated to the affordable housing projects.

The Corporation determines whether it must consolidate these limited partnerships based on a determination as to which party is expected to absorb a majority of the risk created by the real estate held in the vehicle, which may include construction, market and operating risk. Typically, the general partner in a limited partnership will absorb a majority of this risk due to the legal nature of the limited partnership structure and accordingly will consolidate the vehicle. The Corporation's risk of loss is mitigated by policies requiring that the project qualify for the expected tax credits prior to making its investment. The Corporation may from time to time be asked to invest additional amounts to support a troubled project. Such additional investments have not been and are not expected to be significant.

### **Municipal Bond Trusts**

The Corporation administers municipal bond trusts that hold highly-rated, long-term, fixed-rate municipal bonds, some of which are callable prior to maturity. The vast majority of the bonds are rated AAA or AA and some of the bonds benefit from insurance provided by monolines. The trusts obtain financing by issuing floating-rate trust certificates that reprice on a weekly or other basis to third party investors. The Corporation may serve as remarketing agent and/or liquidity provider for the trusts. The floating-rate investors have the right to tender the certificates at specified dates, often with as little as seven days' notice. Should the Corporation be unable to remarket the tendered certificates, it is generally obligated to purchase them at par under standby liquidity facilities. The Corporation is not obligated to purchase the certificates under the standby liquidity facilities if a bond's credit rating declines below investment grade or in the event of certain defaults or bankruptcy of the issuer and insurer. The weighted-average remaining life of bonds held in the trusts at December 31, 2009 was 13.6 years. There were no material write-downs or downgrades of assets or issuers during 2009.

In addition to standby liquidity facilities, the Corporation also provides default protection or credit enhancement to investors in securities issued by certain municipal bond trusts. Interest and principal payments on floating-rate certificates issued by these trusts are secured by an unconditional guarantee issued by the Corporation. In the event that the issuer of the underlying municipal bond defaults on any payment of principal and/or interest when due, the Corporation will make any required payments to the holders of the floating-rate certificates.

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Some of these trusts are QSPEs and, as such, are not subject to consolidation by the Corporation. The Corporation consolidates those trusts that are not QSPEs if it holds the residual interests or otherwise expects to absorb a majority of the variability created by changes in market value of assets in the trusts and changes in market rates of interest. The Corporation does not consolidate a trust if the customer holds the residual interest and the Corporation is protected from loss in connection with its liquidity obligations. For example, the Corporation may have the ability to trigger the liquidation of a trust that is not a QSPE if the market value of the bonds held in the trust declines below a specified threshold which is designed to limit market losses to an amount that is less than the customer's residual interest, effectively preventing the Corporation from absorbing the losses incurred on the assets held within the trust.

The Corporation's liquidity commitments to unconsolidated trusts totaled \$9.8 billion and \$6.8 billion at December 31, 2009 and 2008. The increase is due principally to the addition of unconsolidated trusts acquired through the Merrill Lynch acquisition. At December 31, 2009 and 2008, the Corporation held \$155 million and \$688 million of floating-rate certificates issued by the municipal bond trusts in trading account assets.

### Collateralized Debt Obligation Vehicles

CDO vehicles hold diversified pools of fixed income securities, typically corporate debt or asset-backed securities, which they fund by issuing multiple tranches of debt and equity securities. Synthetic CDOs enter into a portfolio of credit default swaps to synthetically create exposure to fixed income securities. Collateralized loan obligations (CLOs) are a subset of CDOs which hold pools of loans, typically corporate loans or commercial mortgages. CDOs are typically managed by third party portfolio managers. The Corporation transfers assets to these CDOs, holds securities issued by the CDOs, and may be a derivative counterparty to the CDOs, including credit default swap counterparty for synthetic CDOs. The Corporation receives fees for structuring CDOs and providing liquidity support for super senior tranches of securities issued by certain CDOs. The Corporation has also entered into total return swaps with certain CDOs whereby the Corporation will absorb the economic returns generated by specified assets held by the CDO. No third parties provide a significant amount of similar commitments to these CDOs.

The Corporation evaluates whether it must consolidate a CDO based principally on a determination as to which party is expected to absorb a majority of the credit risk created by the assets of the CDO. The Corporation does not typically retain a significant portion of debt securities issued by a CDO. When the Corporation structured certain CDOs, it acquired the super senior tranches, which are the most senior class of securities issued by the CDOs and benefit from the subordination of all other securities issued by the vehicle, or provided commitments to support the issuance of super senior commercial paper to third parties. When the CDOs were first created, the Corporation did not expect its investments or its liquidity commitments to absorb a significant amount of the variability driven by the credit risk within the CDOs and did not consolidate the CDOs. When the Corporation subsequently acquired commercial paper or term securities issued by certain CDOs during 2009 and 2008, principally as a result of its liquidity obligations, updated consolidation analyses were performed. Due to credit deterioration in the pools of securities held by the CDOs, the updated analyses indicated that the Corporation would now be expected to absorb a majority of the variability, and accordingly, these CDOs were consolidated. Consolidation did not have a significant impact on the Corporation's results of operations, as the Corporation's investments and liquidity obligations were recorded at fair value prior to consolidation. The creditors of the consolidated CDOs have no recourse to the general credit of the Corporation.

The December 31, 2009 CDO balances include a portfolio of liquidity exposures obtained in connection with the Merrill Lynch acquisition,

including \$1.9 billion notional amount of liquidity support provided to certain synthetic CDOs in the form of unfunded lending commitments related to super senior securities. The lending commitments obligate the Corporation to purchase the super senior CDO securities at par value if the CDOs need cash to make payments due under credit default swaps held by the CDOs. This portfolio also includes an additional \$1.3 billion notional amount of liquidity exposure to non-SPE third parties that hold super senior cash positions on the Corporation's behalf. The Corporation's net exposure to loss on these positions, after write-downs and insurance, was \$88 million at December 31, 2009.

Liquidity-related commitments also include \$1.4 billion notional amount of derivative contracts with unconsolidated SPEs, principally CDO vehicles, which hold non-super senior CDO debt securities or other debt securities on the Corporation's behalf. These derivatives are typically in the form of total return swaps which obligate the Corporation to purchase the securities at the SPE's cost to acquire the securities, generally as a result of ratings downgrades. The underlying securities are senior securities and substantially all of the Corporation's exposures are insured. Accordingly, the Corporation's exposure to loss consists principally of counterparty risk to the insurers. These derivatives are included in the \$2.8 billion notional amount of derivative contracts through which the Corporation obtains funding from third party SPEs, discussed in *Note 14 – Commitments and Contingencies*.

The \$4.6 billion of liquidity exposure described above is included in the Unconsolidated VIEs table to the extent that the Corporation's involvement with the CDO vehicle meets the requirements for disclosure. For example, if the Corporation did not sponsor a CDO vehicle and does not hold a significant variable interest, the vehicle is not included in the table.

Including such liquidity commitments, the portfolio of CDO investments obtained in connection with the Merrill Lynch acquisition and included in the Unconsolidated VIEs table pertains to CDO vehicles with total assets of \$55.6 billion. The Corporation's maximum exposure to loss with regard to these positions is \$6.0 billion. This amount is significantly less than the total assets of the CDO vehicles because the Corporation typically has exposure to only a portion of the total assets. The Corporation has also purchased credit protection from some of the same CDO vehicles in which it invested, thus reducing net exposure to future loss.

At December 31, 2008, liquidity commitments provided to CDOs included written put options with a notional amount of \$542 million. All of these written put options were terminated in the first quarter of 2009.

### Leveraged Lease Trusts

The Corporation's net involvement with consolidated leveraged lease trusts totaled \$5.6 billion and \$5.8 billion at December 31, 2009 and 2008. The trusts hold long-lived equipment such as rail cars, power generation and distribution equipment, and commercial aircraft. The Corporation consolidates these trusts because it holds a residual interest which is expected to absorb a majority of the variability driven by credit risk of the lessee and, in some cases, by the residual risk of the leased property. The net investment represents the Corporation's maximum loss exposure to the trusts in the unlikely event that the leveraged lease investments become worthless. Debt issued by the leveraged lease trusts is nonrecourse to the Corporation. The Corporation has no liquidity exposure to these leveraged lease trusts.

### Customer Vehicles

Customer vehicles include credit-linked and equity-linked note vehicles, repackaging vehicles, and asset acquisition vehicles, which are typically created on behalf of customers who wish to obtain market or credit exposure to a specific company or financial instrument.

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Credit-linked and equity-linked note vehicles issue notes which pay a return that is linked to the credit or equity risk of a specified company or debt instrument. The vehicles purchase high-grade assets as collateral and enter into credit default swaps or equity derivatives to synthetically create the credit or equity risk to pay the specified return on the notes. The Corporation is typically the counterparty for some or all of the credit and equity derivatives and, to a lesser extent, it may invest in securities issued by the vehicles. The Corporation may also enter into interest rate or foreign currency derivatives with the vehicles. The Corporation does not typically consolidate the vehicles because the derivatives create variability which is absorbed by the third party investors. The Corporation is exposed to loss if the collateral held by the vehicle declines in value and is insufficient to cover the vehicle's obligation to the Corporation under the above-referenced derivatives. In addition, the Corporation has entered into derivative contracts, typically total return swaps, with certain vehicles which obligate the Corporation to purchase securities held as collateral at the vehicle's cost, typically as a result of ratings downgrades. These exposures were obtained in connection with the Merrill Lynch acquisition. The underlying securities are senior securities and substantially all of the Corporation's exposures are insured. Accordingly, the Corporation's exposure to loss consists principally of counterparty risk to the insurers. The Corporation consolidates these vehicles if the variability in cash flows expected to be generated by the collateral is greater than the variability in cash flows expected to be generated by the credit or equity derivatives. At December 31, 2009, the notional amount of such derivative contracts with unconsolidated vehicles was \$1.4 billion. This amount is included in the \$2.8 billion notional amount of derivative contracts through which the Corporation obtains funding from unconsolidated SPEs, described in *Note 14 – Commitments and Contingencies*. The Corporation also has approximately \$628 million of other liquidity commitments, including written put options and collateral value guarantees, with credit-linked and equity-linked vehicles at December 31, 2009.

Repackaging vehicles are created to provide an investor with a specific risk profile. The vehicles typically hold a security and a derivative that modify the interest rate or currency of that security, and issues one class of notes to a single investor. These vehicles are generally QSPEs and as such are not subject to consolidation by the Corporation.

Asset acquisition vehicles acquire financial instruments, typically loans, at the direction of a single customer and obtain funding through the issuance of structured notes to the Corporation. At the time the vehicle acquires an asset, the Corporation enters into a total return swap with the customer such that the economic returns of the asset are passed through to the customer. As a result, the Corporation does not consolidate the vehicles. The Corporation is exposed to counterparty credit risk if the asset declines in value and the customer defaults on its obligation to the Corporation under the total return swap. The Corporation's risk may be mitigated by collateral or other arrangements.

### Other Vehicles

Other consolidated vehicles primarily include asset acquisition conduits and real estate investment vehicles. Other unconsolidated vehicles include asset acquisition conduits and other corporate conduits.

The Corporation administers three asset acquisition conduits which acquire assets on behalf of the Corporation or its customers. Two of the conduits, which are unconsolidated, acquire assets at the request of customers who wish to benefit from the economic returns of the specified assets on a leveraged basis, which consist principally of liquid exchange-traded equity securities. The consolidated conduit holds subordinated debt securities for the Corporation's benefit. The conduits obtain funding by issuing commercial paper and subordinated certificates to third party investors. Repayment of the commercial paper and certificates is assured by total return swaps between the Corporation and the conduits and for unconsolidated conduits the Corporation is reimbursed through total return swaps with its customers. The weighted-average maturity of commercial paper issued by the conduits at December 31, 2009 was 68 days. The Corporation receives fees for serving as commercial paper placement agent and for providing administrative services to the conduits. At December 31, 2009 and 2008, the Corporation did not hold any commercial paper issued by the asset acquisition conduits other than incidentally and in its role as a commercial paper dealer.

The Corporation determines whether it must consolidate an asset acquisition conduit based on the design of the conduit and whether the third party investors are exposed to the Corporation's credit risk or the market risk of the assets. Interest rate risk is not included in the cash flow analysis because the conduits are not designed to absorb and pass along interest rate risk to investors who receive current rates of interest that are appropriate for the tenor and relative risk of their investments. When a conduit acquires assets for the benefit of the Corporation's customers, the Corporation enters into back-to-back total return swaps with the conduit and the customer such that the economic returns of the assets are passed through to the customer. The Corporation's performance under the derivatives is collateralized by the underlying assets and as such the third party investors are exposed primarily to the credit risk of the Corporation. The Corporation's exposure to the counterparty credit risk of its customers is mitigated by the aforementioned collateral arrangements and the ability to liquidate an asset held in the conduit if the customer defaults on its obligation. When a conduit acquires assets on the Corporation's behalf and the Corporation absorbs the market risk of the assets, it consolidates the conduit. Derivatives related to unconsolidated conduits are carried at fair value with changes in fair value recorded in trading account profits (losses).

Other corporate conduits at December 31, 2008 included several commercial paper conduits which held primarily high-grade, long-term municipal, corporate and mortgage-backed securities. During the second quarter of 2009, the Corporation was unable to remarket the conduits' commercial paper and, in accordance with existing contractual arrangements, the conduits were liquidated. Due to illiquidity in the financial markets, the Corporation purchased a majority of these assets. At December 31, 2009, the Corporation held \$207 million of assets acquired from the liquidation of other corporate conduits and previous mandatory sales of assets out of the conduits. These assets are recorded on the Consolidated Balance Sheet in trading account assets.

## NOTE 10 – Goodwill and Intangible Assets

The following table presents goodwill at December 31, 2009 and 2008, which includes \$5.1 billion of goodwill from the acquisition of Merrill Lynch and \$4.4 billion of goodwill from the acquisition of Countrywide. As discussed in more detail in *Note 23 – Business Segment Information*, the

Corporation changed its basis of presentation from three segments to six segments effective January 1, 2009 in connection with the Merrill Lynch acquisition. The reporting units utilized for goodwill impairment tests are the business segments or one level below the business segments.

	December 31	
	2009	2008
(Dollars in millions)		
Deposits	\$ 17,875	\$ 17,805
Global Card Services	22,292	22,271
Home Loans & Insurance	4,797	4,797
Global Banking	27,550	28,409
Global Markets	3,358	2,080
Global Wealth & Investment Management	10,411	6,503
All Other	31	69
<b>Total goodwill</b>	<b>\$ 86,314</b>	<b>\$ 81,934</b>

No goodwill impairment was recognized for 2009 and 2008. For more information on goodwill impairment testing, see the *Goodwill and Intangible Assets* section of *Note 1 – Summary of Significant Accounting Principles*.

Based on the results of the annual impairment test at June 30, 2009, and due to continued stress on *Home Loans & Insurance* and *Global Card Services* as a result of current market conditions, the Corporation concluded that an additional impairment analysis should be performed for these two reporting units as of December 31, 2009. In performing the first step of the additional impairment analysis, the Corporation compared the fair value of each reporting unit to its carrying amount, including goodwill. Consistent with the annual test, the Corporation utilized a combination of the market approach and the income approach for *Home Loans & Insurance* and the income approach for *Global Card Services*. For *Home Loans & Insurance* the carrying value exceeded the fair value, and

accordingly, the second step analysis of comparing the implied fair value of the reporting unit's goodwill with the carrying amount of that goodwill was performed. Although *Global Card Services* passed step one of the goodwill impairment analysis, to further substantiate the value of the goodwill balance, the Corporation also performed the step two analysis for this reporting unit. The results of the second step of the goodwill impairment test, which were consistent with the results of the annual impairment test, indicated that no goodwill was impaired for 2009.

The following table presents the gross carrying values and accumulated amortization related to intangible assets at December 31, 2009 and 2008. Gross carrying amounts include \$5.4 billion of intangible assets related to the Merrill Lynch acquisition consisting of \$800 million of core deposit intangibles, \$3.1 billion of customer relationships and \$1.5 billion of non-amortizing other intangibles.

	December 31			
	2009		2008	
	Gross Carrying Value	Accumulated Amortization	Gross Carrying Value	Accumulated Amortization
(Dollars in millions)				
Purchased credit card relationships	\$ 7,179	\$ 3,452	\$ 7,080	\$ 2,740
Core deposit intangibles	5,394	3,722	4,594	3,284
Customer relationships	4,232	760	1,104	259
Affinity relationships	1,651	751	1,638	587
Other intangibles	3,438	1,183	2,009	1,020
<b>Total intangible assets</b>	<b>\$ 21,894</b>	<b>\$ 9,868</b>	<b>\$ 16,425</b>	<b>\$ 7,890</b>

Amortization of intangibles expense was \$2.0 billion, \$1.8 billion and \$1.7 billion in 2009, 2008 and 2007, respectively. The Corporation estimates aggregate amortization expense will be approximately \$1.8 bil - -

lion, \$1.6 billion, \$1.4 billion, \$1.2 billion and \$1.0 billion for 2010 through 2014, respectively.

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**NOTE 11 – Deposits**

The Corporation had domestic certificates of deposit and other domestic time deposits of \$100 thousand or more totaling \$99.4 billion and \$136.6 billion at December 31, 2009 and 2008. Foreign certificates of deposit and other foreign time deposits of \$100 thousand or more totaled \$67.2 billion and \$85.4 billion at December 31, 2009 and 2008.

**Time deposits of \$100 thousand or more**

(Dollars in millions)	Three months or less	Over three months to twelve months	Thereafter	Total
Domestic certificates of deposit and other time deposits	\$ 44,723	\$ 45,651	\$ 9,058	<b>\$99,432</b>
Foreign certificates of deposit and other time deposits	62,473	3,488	1,282	<b>67,243</b>

At December 31, 2009, the scheduled maturities for total time deposits were as follows:

(Dollars in millions)	Domestic	Foreign	Total
Due in 2010	\$ 174,731	\$ 72,507	<b>\$ 247,238</b>
Due in 2011	14,511	402	<b>14,913</b>
Due in 2012	3,256	312	<b>3,568</b>
Due in 2013	3,284	216	<b>3,500</b>
Due in 2014	2,873	40	<b>2,913</b>
Thereafter	2,282	342	<b>2,624</b>
<b>Total time deposits</b>	<b>\$ 200,937</b>	<b>\$ 73,819</b>	<b>\$ 274,756</b>

**NOTE 12 – Short-term Borrowings**

Bank of America, N.A. maintains a global program to offer up to a maximum of \$75.0 billion outstanding at any one time, of bank notes with fixed or floating rates and maturities of at least seven days from the date of issue. Short-term bank notes outstanding under this program totaled \$20.6 billion at December 31, 2009 compared to \$10.5 billion at December 31, 2008. These short-term bank notes, along with Federal

Home Loan Bank advances, U.S. Treasury tax and loan notes, and term federal funds purchased, are reflected in commercial paper and other short-term borrowings on the Consolidated Balance Sheet. See *Note 13 – Long-term Debt* for information regarding the long-term notes that may be issued under the \$75.0 billion bank note program.

The following table presents information for short-term borrowings.

**Short-term Borrowings**

(Dollars in millions)	2009		2008		2007	
	Amount	Rate	Amount	Rate	Amount	Rate
<b>Federal funds purchased</b>						
At December 31	\$ 4,814	0.09%	\$ 14,432	0.11%	\$ 14,187	4.15%
Average during year	4,239	0.05	8,969	1.67	7,595	4.84
Maximum month-end balance during year	4,814	—	18,788	—	14,187	—
<b>Securities loaned or sold under agreements to repurchase</b>						
At December 31	250,371	0.39	192,166	0.84	207,248	4.63
Average during year	365,624	0.96	264,012	2.54	245,886	5.21
Maximum month-end balance during year	430,067	—	295,537	—	277,196	—
<b>Commercial paper</b>						
At December 31	13,131	0.65	37,986	1.80	55,596	4.85
Average during year	26,697	1.03	57,337	3.09	57,712	5.03
Maximum month-end balance during year	37,025	—	65,399	—	69,367	—
<b>Other short-term borrowings</b>						
At December 31	56,393	1.72	120,070	2.07	135,493	4.95
Average during year	92,083	1.87	125,392	2.99	113,621	5.18
Maximum month-end balance during year	169,602	—	160,150	—	142,047	—

**NOTE 13 – Long-term Debt**

Long-term debt consists of borrowings having an original maturity of one year or more. The following table presents the balance of long-term debt at December 31, 2009 and 2008 and the related rates and maturity dates at December 31, 2009.

	December 31	
	2009	2008
(Dollars in millions)		
<b>Notes issued by Bank of America Corporation</b>		
Senior notes:		
Fixed, with a weighted-average rate of 4.80%, ranging from 0.61% to 7.63%, due 2010 to 2043	\$ 78,282	\$ 64,799
Floating, with a weighted-average rate of 1.17%, ranging from 0.15% to 4.57%, due 2010 to 2041	47,731	51,488
Structured notes	8,897	5,565
Subordinated notes:		
Fixed, with a weighted-average rate of 5.69%, ranging from 2.40% to 10.20%, due 2010 to 2038	28,017	29,618
Floating, with a weighted-average rate of 1.60%, ranging from 0.60% to 4.39%, due 2016 to 2019	681	650
Junior subordinated notes (related to trust preferred securities):		
Fixed, with a weighted-average rate of 6.71%, ranging from 5.25% to 11.45%, due 2026 to 2055	15,763	15,606
Floating, with a weighted-average rate of 0.88%, ranging from 0.50% to 3.63%, due 2027 to 2056	3,517	3,736
<b>Total notes issued by Bank of America Corporation</b>	<b>182,888</b>	<b>171,462</b>
<b>Notes issued by Merrill Lynch &amp; Co., Inc. and subsidiaries</b>		
Senior notes:		
Fixed, with a weighted-average rate of 5.24%, ranging from 0.05% to 8.83%, due 2010 to 2066	52,506	–
Floating, with a weighted-average rate of 0.80%, ranging from 0.13% to 5.29%, due 2010 to 2044	36,624	–
Structured notes	48,518	–
Subordinated notes:		
Fixed, with a weighted-average rate of 6.07%, ranging from 0.12% to 8.13%, due 2010 to 2038	9,258	–
Floating, with a weighted-average rate of 1.12%, ranging from 0.83% to 1.26%, due 2017 to 2037	1,857	–
Junior subordinated notes (related to trust preferred securities):		
Fixed, with a weighted-average rate of 6.93%, ranging from 6.45% to 7.38%, due 2062 to 2066	3,552	–
Other long-term debt	2,636	–
<b>Total notes issued by Merrill Lynch &amp; Co., Inc. and subsidiaries</b>	<b>154,951</b>	<b>–</b>
<b>Notes issued by Bank of America, N.A. and other subsidiaries</b>		
Senior notes:		
Fixed, with a weighted-average rate of 2.16%, ranging from 0.40% to 8.10%, due 2010 to 2027	12,461	6,103
Floating, with a weighted-average rate of 0.38%, ranging from 0.15% to 3.31%, due 2010 to 2051	24,846	28,467
Subordinated notes:		
Fixed, with a weighted-average rate of 5.91%, ranging from 5.30% to 7.13%, due 2012 to 2036	5,193	5,593
Floating, with a weighted-average rate of 0.73%, ranging from 0.25% to 3.76%, due 2010 to 2027	2,272	2,796
<b>Total notes issued by Bank of America, N.A. and other subsidiaries</b>	<b>44,772</b>	<b>42,959</b>
<b>Notes issued by NB Holdings Corporation</b>		
Junior subordinated notes (related to trust preferred securities):		
Floating, 0.85%, due 2027	258	258
<b>Total notes issued by NB Holdings Corporation</b>	<b>258</b>	<b>258</b>
<b>Notes issued by BAC North America Holding Company and subsidiaries</b>		
Senior notes:		
Fixed, with a weighted-average rate of 5.40%, ranging from 3.00% to 7.00%, due 2010 to 2026	420	562
Junior subordinated notes (related to trust preferred securities):		
Fixed, 6.97%, perpetual	490	491
Floating, with a weighted-average rate of 1.54%, ranging from 0.31% to 2.03%, perpetual	945	940
<b>Total notes issued by BAC North America Holding Company and subsidiaries</b>	<b>1,855</b>	<b>1,993</b>
<b>Other debt</b>		
Advances from Federal Home Loan Banks:		
Fixed, with a weighted-average rate of 4.08%, ranging from 0.36% to 8.29%, due 2010 to 2028	53,032	48,495
Floating, with a weighted-average rate of 0.14%, ranging from 0.13% to 0.14%, due 2011 to 2013	750	2,750
Other	15	375
<b>Total other debt</b>	<b>53,797</b>	<b>51,620</b>
<b>Total long-term debt</b>	<b>\$ 438,521</b>	<b>\$ 268,292</b>

The majority of the floating rates are based on three- and six-month London InterBank Offered Rates (LIBOR).

Bank of America Corporation, Merrill Lynch & Co., Inc. and subsidiaries, and Bank of America, N.A. maintain various domestic and international debt programs to offer both senior and subordinated notes. The notes may be denominated in U.S. dollars or foreign currencies. At December 31, 2009 and 2008, the amount of foreign currency-denominated debt translated into U.S. dollars included in total long-term debt was \$156.8 billion and \$53.3 billion. Foreign currency contracts are used to convert certain foreign currency-denominated debt into U.S. dollars.

At December 31, 2009 and 2008, Bank of America Corporation was authorized to issue approximately \$119.1 billion and \$92.9 billion of additional corporate debt and other securities under its existing domestic shelf registration statements. At December 31, 2009 and 2008, Bank of

America, N.A. was authorized to issue \$35.3 billion and \$48.3 billion of additional bank notes. Long-term bank notes outstanding under Bank of America, N.A.'s \$75.0 billion bank note program totaled \$19.1 billion and \$16.2 billion at December 31, 2009 and 2008. In addition, Bank of America, N.A. was authorized to issue \$20.6 billion of additional mortgage notes under the \$30.0 billion mortgage bond program at both December 31, 2009 and 2008.

The weighted-average effective interest rates for total long-term debt (excluding structured notes), total fixed-rate debt and total floating-rate debt (based on the rates in effect at December 31, 2009) were 3.62 percent, 4.93 percent and 0.80 percent, respectively, at December 31, 2009 and (based on the rates in effect at December 31, 2008) were 4.26 percent, 5.05 percent and 2.80 percent, respectively, at December 31, 2008.

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The weighted-average interest rate for debt (excluding structured notes) issued by Merrill Lynch & Co., Inc. and subsidiaries was 3.73 percent at December 31, 2009. The Corporation has not assumed or guaranteed the \$154 billion of long-term debt that was issued or guaranteed by Merrill Lynch & Co., Inc. or its subsidiaries prior to the acquisition of Merrill Lynch by the Corporation. Beginning late in the third quarter of 2009, in connection with the update or renewal of certain Merrill Lynch international securities offering programs, the Corporation agreed to guarantee debt securities, warrants and/or certificates issued by certain subsidiaries of Merrill Lynch & Co., Inc. on a going forward basis. All existing Merrill Lynch & Co., Inc. guarantees of securities issued by those

same Merrill Lynch subsidiaries under various international securities offering programs will remain in full force and effect as long as those securities are outstanding, and the Corporation has not assumed any of those prior Merrill Lynch & Co., Inc. guarantees or otherwise guaranteed such securities.

In addition, certain structured notes acquired in the acquisition of Merrill Lynch are accounted for under the fair value option. For more information on these structured notes, see *Note 20 – Fair Value Measurements*.

Aggregate annual maturities of long-term debt obligations at December 31, 2009 are as follows:

(Dollars in millions)	2010	2011	2012	2013	2014	Thereafter	Total
Bank of America Corporation	\$23,354	\$15,711	\$39,880	\$7,714	\$16,119	\$80,110	\$182,888
Merrill Lynch & Co., Inc. and subsidiaries	31,680	19,867	18,760	21,246	17,210	46,188	154,951
Bank of America, N.A. and other subsidiaries	20,779	58	5,759	3,240	99	14,837	44,772
NB Holdings Corporation	—	—	—	—	—	258	258
BAC North America Holding Company and subsidiaries	74	43	15	26	45	1,652	1,855
Other	23,257	18,364	5,597	5,132	1,272	175	53,797
<b>Total</b>	<b>\$99,144</b>	<b>\$54,043</b>	<b>\$70,011</b>	<b>\$37,358</b>	<b>\$34,745</b>	<b>\$143,220</b>	<b>\$438,521</b>

Certain structured notes contain provisions whereby the borrowings are redeemable at the option of the holder (put options) at specified dates prior to maturity. Other structured notes have coupon or repayment terms linked to the performance of debt or equity securities, indices, currencies or commodities and the maturity may be accelerated based on the value of a referenced index or security. In both cases, the Corporation or a subsidiary, may be required to settle the obligation for cash or other securities prior to the contractual maturity date. These borrowings are reflected in the above table as maturing at their earliest put or redemption date.

### Trust Preferred and Hybrid Securities

Trust preferred securities (Trust Securities) are issued by trust companies (the Trusts) that are not consolidated. These Trust Securities are mandatorily redeemable preferred security obligations of the Trusts. The sole assets of the Trusts generally are junior subordinated deferrable interest notes of the Corporation or its subsidiaries (the Notes). The Trusts generally are 100 percent owned finance subsidiaries of the Corporation. Obligations associated with the Notes are included in the Long-term Debt table on the previous page.

Certain of the Trust Securities were issued at a discount and may be redeemed prior to maturity at the option of the Corporation. The Trusts generally have invested the proceeds of such Trust Securities in the Notes. Each issue of the Notes has an interest rate equal to the corresponding Trust Securities distribution rate. The Corporation has the right to defer payment of interest on the Notes at any time or from time to time for a period not exceeding five years provided that no extension period may extend beyond the stated maturity of the relevant Notes. During any such extension period, distributions on the Trust Securities will also be deferred and the Corporation's ability to pay dividends on its common and preferred stock will be restricted.

The Trust Securities generally are subject to mandatory redemption upon repayment of the related Notes at their stated maturity dates or their earlier redemption at a redemption price equal to their liquidation amount plus accrued distributions to the date fixed for redemption and the premium, if any, paid by the Corporation upon concurrent repayment of the related Notes.

Periodic cash payments and payments upon liquidation or redemption with respect to Trust Securities are guaranteed by the Corporation or its

subsidiaries to the extent of funds held by the Trusts (the Preferred Securities Guarantee). The Preferred Securities Guarantee, when taken together with the Corporation's other obligations including its obligations under the Notes, generally will constitute a full and unconditional guarantee, on a subordinated basis, by the Corporation of payments due on the Trust Securities.

Hybrid Income Term Securities (HITS) totaling \$1.6 billion were also issued by the Trusts to institutional investors in 2007. The BAC Capital Trust XIII Floating Rate Preferred HITS have a distribution rate of three-month LIBOR plus 40 bps and the BAC Capital Trust XIV Fixed-to-Floating Rate Preferred HITS have an initial distribution rate of 5.63 percent. Both series of HITS represent beneficial interests in the assets of the respective capital trust, which consist of a series of the Corporation's junior subordinated notes and a stock purchase contract for a specified series of the Corporation's preferred stock. The Corporation will remarket the junior subordinated notes underlying each series of HITS on or about the five-year anniversary of the issuance to obtain sufficient funds for the capital trusts to buy the Corporation's preferred stock under the stock purchase contracts.

In connection with the HITS, the Corporation entered into two replacement capital covenants for the benefit of investors in certain series of the Corporation's long-term indebtedness (Covered Debt). As of December 31, 2009, the Corporation's 6.625% Junior Subordinated Notes due 2036 constitute the Covered Debt under the covenant corresponding to the Floating Rate Preferred HITS and the Corporation's 5.625% Junior Subordinated Notes due 2035 constitute the Covered Debt under the covenant corresponding to the Fixed-to-Floating Rate Preferred HITS. These covenants generally restrict the ability of the Corporation and its subsidiaries to redeem or purchase the HITS and related securities unless the Corporation has obtained the prior approval of the Board of Governors of the Federal Reserve System (Federal Reserve) if required under the Federal Reserve's capital guidelines, the redemption or purchase price of the HITS does not exceed the amount received by the Corporation from the sale of certain qualifying securities, and such replacement securities qualify as Tier 1 Capital and are not "restricted core capital elements" under the Federal Reserve's guidelines.

Also included in the outstanding Trust Securities and Notes in the following table are non-consolidated wholly owned subsidiary funding vehicles of BAC North America Holding Company (BACNAH, formerly ABN

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AMRO North America Holding Company) and its subsidiary, LaSalle, that issued preferred securities (Funding Securities). These subsidiary funding vehicles have invested the proceeds of their Funding Securities in separate series of preferred securities of BACNAH or LaSalle, as applicable (BACNAH Preferred Securities). The BACNAH Preferred Securities (and the corresponding Funding Securities) are non-cumulative and permit nonpayment of dividends within certain limitations. The issuance dates for the BACNAH Preferred Securities (and the related Funding Securities)

range from 2000 to 2001. These Funding Securities are subject to mandatory redemption upon repayment by the issuer of the corresponding series of BACNAH Preferred Securities at a redemption price equal to their liquidation amount plus accrued and unpaid distributions for up to one quarter.

For additional information on Trust Securities for regulatory capital purposes, see *Note 16 – Regulatory Requirements and Restrictions*.



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The following table is a summary of the outstanding Trust and Hybrid Securities and the related Notes at December 31, 2009 as originated by Bank of America Corporation and its predecessor companies and subsidiaries.

Issuer	Issuance Date	Aggregate		Stated Maturity of the Notes	Per Annum Interest Rate of the Notes	Interest Payment Dates	Redemption Period
		Amount of Trust Securities	Principal Amount of the Notes				
<b>Bank of America</b>							
Capital Trust I	December 2001	\$ 575	\$ 593	December 2031	7.00%	3/15,6/15,9/15,12/15	On or after 12/15/06
Capital Trust II	January 2002	900	928	February 2032	7.00	2/1,5/1,8/1,11/1	On or after 2/01/07
Capital Trust III	August 2002	500	516	August 2032	7.00	2/15,5/15,8/15,11/15	On or after 8/15/07
Capital Trust IV	April 2003	375	387	May 2033	5.88	2/1,5/1,8/1,11/1	On or after 5/01/08
Capital Trust V	November 2004	518	534	November 2034	6.00	2/3,5/3,8/3,11/3	On or after 11/03/09
Capital Trust VI	March 2005	1,000	1,031	March 2035	5.63	3/8,9/8	Any time
Capital Trust VII (1)	August 2005	1,415	1,415	August 2035	5.25	2/10,8/10	Any time
Capital Trust VIII	August 2005	530	546	August 2035	6.00	2/25,5/25,8/25,11/25	On or after 8/25/10
Capital Trust X	March 2006	900	928	March 2055	6.25	3/29,6/29,9/29,12/29	On or after 3/29/11
Capital Trust XI	May 2006	1,000	1,031	May 2036	6.63	5/23,11/23	Any time
Capital Trust XII	August 2006	863	890	August 2055	6.88	2/2,5/2,8/2,11/2	On or after 8/02/11
Capital Trust XIII	February 2007	700	700	March 2043	3-mo. LIBOR +40 bps	3/15,6/15,9/15,12/15	On or after 3/15/17
Capital Trust XIV	February 2007	850	850	March 2043	5.63	3/15,9/15	On or after 3/15/17
Capital Trust XV	May 2007	500	500	June 2056	3-mo. LIBOR +80 bps	3/1,6/1,9/1,12/1	On or after 6/01/37
<b>NationsBank</b>							
Capital Trust II	December 1996	365	376	December 2026	7.83	6/15,12/15	On or after 12/15/06
Capital Trust III	February 1997	500	515	January 2027	3-mo. LIBOR +55 bps	1/15,4/15,7/15,10/15	On or after 1/15/07
Capital Trust IV	April 1997	500	515	April 2027	8.25	4/15,10/15	On or after 4/15/07
<b>BankAmerica</b>							
Institutional Capital A	November 1996	450	464	December 2026	8.07	6/30,12/31	On or after 12/31/06
Institutional Capital B	November 1996	300	309	December 2026	7.70	6/30,12/31	On or after 12/31/06
Capital II	December 1996	450	464	December 2026	8.00	6/15,12/15	On or after 12/15/06
Capital III	January 1997	400	412	January 2027	3-mo. LIBOR +57 bps	1/15,4/15,7/15,10/15	On or after 1/15/02
<b>Barnett</b>							
Capital III	January 1997	250	258	February 2027	3-mo. LIBOR +62.5 bps	2/1,5/1,8/1,11/1	On or after 2/01/07
<b>Fleet</b>							
Capital Trust II	December 1996	250	258	December 2026	7.92	6/15,12/15	On or after 12/15/06
Capital Trust V	December 1998	250	258	December 2028	3-mo. LIBOR +100 bps	3/18,6/18,9/18,12/18	On or after 12/18/03
Capital Trust VIII	March 2002	534	550	March 2032	7.20	3/15,6/15,9/15,12/15	On or after 3/08/07
Capital Trust IX	July 2003	175	180	August 2033	6.00	2/1,5/1,8/1,11/1	On or after 7/31/08
<b>BankBoston</b>							
Capital Trust III	June 1997	250	258	June 2027	3-mo. LIBOR +75 bps	3/15,6/15,9/15,12/15	On or after 6/15/07
Capital Trust IV	June 1998	250	258	June 2028	3-mo. LIBOR +60 bps	3/8,6/8,9/8,12/8	On or after 6/08/03
<b>Progress</b>							
Capital Trust I	June 1997	9	9	June 2027	10.50	6/1,12/1	On or after 6/01/07
Capital Trust II	July 2000	6	6	July 2030	11.45	1/19,7/19	On or after 7/19/10
Capital Trust III	November 2002	10	10	November 2032	3-mo. LIBOR +335 bps	2/15,5/15,8/15,11/15	On or after 11/15/07
Capital Trust IV	December 2002	5	5	January 2033	3-mo. LIBOR +335 bps	1/7,4/7,7/7,10/7	On or after 1/07/08
<b>MBNA</b>							
Capital Trust A	December 1996	250	258	December 2026	8.28	6/1,12/1	On or after 12/01/06
Capital Trust B	January 1997	280	289	February 2027	3-mo. LIBOR +80 bps	2/1,5/1,8/1,11/1	On or after 2/01/07
Capital Trust D	June 2002	300	309	October 2032	8.13	1/1,4/1,7/1,10/1	On or after 10/01/07
Capital Trust E	November 2002	200	206	February 2033	8.10	2/15,5/15,8/15,11/15	On or after 2/15/08
<b>ABN AMRO North America</b>							
Series I	May 2001	77	77	Perpetual	3-mo. LIBOR +175 bps	2/15,5/15,8/15,11/15	On or after 11/8/12
Series II	May 2001	77	77	Perpetual	3-mo. LIBOR +175 bps	3/15,6/15,9/15,12/15	On or after 11/8/12
Series III	May 2001	77	77	Perpetual	3-mo. LIBOR +175 bps	1/15,4/15,7/15,10/15	On or after 11/8/12
Series IV	May 2001	77	77	Perpetual	3-mo. LIBOR +175 bps	2/28,5/30,8/30,11/30	On or after 11/8/12
Series V	May 2001	77	77	Perpetual	3-mo. LIBOR +175 bps	3/30,6/30,9/30,12/30	On or after 11/8/12
Series VI	May 2001	77	77	Perpetual	3-mo. LIBOR +175 bps	1/30,4/30,7/30,10/30	On or after 11/8/12
Series VII	May 2001	88	88	Perpetual	3-mo. LIBOR +175 bps	3/15,6/15,9/15,12/15	On or after 11/8/12
Series IX	June 2001	70	70	Perpetual	3-mo. LIBOR +175 bps	3/5,6/5,9/5,12/5	On or after 11/8/12
Series X	June 2001	53	53	Perpetual	3-mo. LIBOR +175 bps	3/12,6/12,9/12,12/12	On or after 11/8/12
Series XI	June 2001	27	27	Perpetual	3-mo. LIBOR +175 bps	3/26,6/26,9/26,12/26	On or after 11/8/12
Series XII	June 2001	80	80	Perpetual	3-mo. LIBOR +175 bps	1/10,4/10,7/10,10/10	On or after 11/8/12
Series XIII	June 2001	70	70	Perpetual	3-mo. LIBOR +175 bps	1/24,4/24,7/24,10/24	On or after 11/8/12
<b>LaSalle</b>							
Series I					6.97% through 9/15/2010; 3-mo. LIBOR +105.5 bps thereafter		
Series J	August 2000	491	491	Perpetual	3-mo. LIBOR +5.5 bps through 9/15/2010; 3-mo. LIBOR +105.5 bps thereafter	3/15,6/15,9/15,12/15	On or after 9/15/10
	September 2000	95	95	Perpetual	thereafter	3/15,6/15,9/15,12/15	On or after 9/15/10
<b>Countrywide</b>							
Capital III	June 1997	200	206	June 2027	8.05	6/15,12/15	Only under special event
Capital IV	April 2003	500	515	April 2033	6.75	1/1,4/1,7/1,10/1	On or after 4/11/08
Capital V	November 2006	1,495	1,496	November 2036	7.00	2/1,5/1,8/1,11/1	On or after 11/11/11
<b>Merrill Lynch</b>							
Preferred Capital Trust III	January 1998	750	900	Perpetual	7.00	3/30,6/30,9/30,12/30	On or after 3/08
Preferred Capital Trust IV	June 1998	400	480	Perpetual	7.12	3/30,6/30,9/30,12/30	On or after 6/08
Preferred Capital Trust V	November 1998	850	1,021	Perpetual	7.28	3/30,6/30,9/30,12/30	On or after 9/08
Capital Trust I	December 2006	1,050	1,051	December 2066	6.45	3/15,6/15,9/15,12/15	On or after 12/11
Capital Trust II	May 2007	950	951	June 2062	6.45	3/15,6/15,9/15,12/15	On or after 6/12
Capital Trust III	August 2007	750	751	September 2062	7.375	3/15,6/15,9/15,12/15	On or after 9/12
<b>Total</b>		<b>\$ 24,991</b>	<b>\$ 25,823</b>				

(1) Aggregate principal amount of notes were issued in British Pound. Presentation currency is U.S. Dollar.

**NOTE 14 – Commitments and Contingencies**

In the normal course of business, the Corporation enters into a number of off-balance sheet commitments. These commitments expose the Corporation to varying degrees of credit and market risk and are subject to the same credit and market risk limitation reviews as those instruments recorded on the Corporation's Consolidated Balance Sheet.

**Credit Extension Commitments**

The Corporation enters into commitments to extend credit such as loan commitments, SBLCs and commercial letters of credit to meet the financing needs of its customers. The unfunded legally binding lending commitments shown in the following table are net of amounts distributed (e.g., syndicated) to other financial institutions of \$30.9 billion and \$46.9 billion at December 31, 2009 and 2008. At December 31, 2009, the

carrying amount of these commitments, excluding commitments accounted for under the fair value option, was \$1.5 billion, including deferred revenue of \$34 million and a reserve for unfunded legally binding lending commitments of \$1.5 billion. At December 31, 2008, the comparable amounts were \$454 million, \$33 million and \$421 million. The carrying amount of these commitments is recorded in accrued expenses and other liabilities.

The table below also includes the notional amount of commitments of \$27.0 billion and \$16.9 billion at December 31, 2009 and 2008, which are accounted for under the fair value option. However, the table below excludes the fair value adjustment of \$950 million and \$1.1 billion on these commitments that was recorded in accrued expenses and other liabilities. For information regarding the Corporation's loan commitments accounted for at fair value, see *Note 20 – Fair Value Measurements*.

(Dollars in millions)	Expires in 1 Year or Less	Expires after 1 Year through 3 Years	Expires after 3 Years through 5 Years	Expires after 5 Years	Total
<b>Credit extension commitments, December 31, 2009</b>					
Loan commitments	\$ 149,248	\$ 187,585	\$ 30,897	\$ 28,489	\$ 396,219
Home equity lines of credit	1,810	3,272	10,667	76,924	92,673
Standby letters of credit and financial guarantees <sup>(1)</sup>	29,794	27,789	4,923	13,739	76,245
Commercial letters of credit	2,020	40	–	1,465	3,525
Legally binding commitments <sup>(2)</sup>	182,872	218,686	46,487	120,617	568,662
Credit card lines <sup>(3)</sup>	541,919	–	–	–	541,919
<b>Total credit extension commitments</b>	<b>\$ 724,791</b>	<b>\$ 218,686</b>	<b>\$ 46,487</b>	<b>\$ 120,617</b>	<b>\$ 1,110,581</b>
<b>Credit extension commitments, December 31, 2008</b>					
Loan commitments	\$ 128,992	\$ 120,234	\$ 67,111	\$ 31,200	\$ 347,537
Home equity lines of credit	3,883	2,322	4,799	96,415	107,419
Standby letters of credit and financial guarantees <sup>(1)</sup>	33,350	26,090	8,328	9,812	77,580
Commercial letters of credit	2,228	29	1	1,507	3,765
Legally binding commitments <sup>(2)</sup>	168,453	148,675	80,239	138,934	536,301
Credit card lines <sup>(3)</sup>	827,350	–	–	–	827,350
<b>Total credit extension commitments</b>	<b>\$ 995,803</b>	<b>\$ 148,675</b>	<b>\$ 80,239</b>	<b>\$ 138,934</b>	<b>\$ 1,363,651</b>

<sup>(1)</sup>At December 31, 2009, the notional amount of SBLC and financial guarantees classified as investment grade and non-investment grade based on the credit quality of the underlying reference name within the instrument were \$45.1 billion and \$31.2 billion compared to \$54.4 billion and \$23.2 billion at December 31, 2008.

<sup>(2)</sup>Includes commitments to unconsolidated VIEs and certain QSPEs disclosed in *Note 9 – Variable Interest Entities*, including \$25.1 billion and \$41.6 billion to multi-seller conduits, and \$9.8 billion and \$6.8 billion to municipal bond trusts at December 31, 2009 and 2008. Also includes commitments to SPEs that are not disclosed in *Note 9 – Variable Interest Entities* because the Corporation does not hold a significant variable interest, including \$368 million and \$980 million to customer-sponsored conduits at December 31, 2009 and 2008.

<sup>(3)</sup>Includes business card unused lines of credit.

Legally binding commitments to extend credit generally have specified rates and maturities. Certain of these commitments have adverse change clauses that help to protect the Corporation against deterioration in the borrowers' ability to pay.

**Other Commitments**

**Global Principal Investments and Other Equity Investments**

At December 31, 2009 and 2008, the Corporation had unfunded equity investment commitments of approximately \$2.8 billion and \$1.9 billion. These commitments generally relate to the Corporation's Global Principal Investments business which is comprised of a diversified portfolio of investments in private equity, real estate and other alternative investments. These investments are made either directly in a company or held through a fund. Bridge equity commitments provide equity bridge financing to facilitate clients' investment activities. These conditional commitments are generally retired prior to or shortly following funding via syndication or the client's decision to terminate. Where the Corporation has a binding equity bridge commitment and there is a market disruption or other unexpected event, there is heightened exposure in the portfolio and higher potential for loss, unless an orderly disposition of the exposure can be made. At December 31, 2009, the Corporation did not

have any unfunded bridge equity commitments. The Corporation had funded equity bridges of \$1.2 billion that were committed prior to the market disruption. These equity bridges are considered held for investment and recorded in other assets. In 2009, the Corporation recorded a total of \$670 million in losses in equity investment income related to these investments. At December 31, 2009, these equity bridges had a zero balance.

**Loan Purchases**

In 2005, the Corporation entered into an agreement for the committed purchase of retail automotive loans over a five-year period, ending June 30, 2010. The Corporation purchased \$6.6 billion of such loans in 2009 and purchased \$12.0 billion of such loans in 2008 under this agreement. As of December 31, 2009, the Corporation was committed for additional purchases of \$6.5 billion over the remaining term of the agreement. All loans purchased under this agreement are subject to a comprehensive set of credit criteria. This agreement is accounted for as a derivative liability with a fair value of \$189 million and \$316 million at December 31, 2009 and 2008.

At December 31, 2009, the Corporation had commitments to purchase loans (e.g., residential mortgage and commercial real estate) of \$2.2 billion which upon settlement will be included in loans or LHFS.

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### Operating Leases

The Corporation is a party to operating leases for certain of its premises and equipment. Commitments under these leases are approximately \$3.1 billion, \$2.8 billion, \$2.3 billion, \$1.9 billion and \$1.5 billion for 2010 through 2014, respectively, and \$8.1 billion for all years thereafter.

### Other Commitments

At December 31, 2009, the Corporation had commitments to enter into forward-dated resale and securities borrowing agreements of \$51.8 billion. In addition, the Corporation had commitments to enter into forward-dated repurchase and securities lending agreements of \$58.3 billion. All of these commitments expire within the next 12 months.

Beginning in the second half of 2007, the Corporation provided support to certain cash funds managed within *GWIM*. The funds for which the Corporation provided support typically invested in high quality, short-term securities with a portfolio weighted-average maturity of 90 days or less, including securities issued by SIVs and senior debt holdings of financial service companies. Due to market disruptions, certain investments in SIVs and senior debt securities were downgraded by the ratings agencies and experienced a decline in fair value. The Corporation entered into capital commitments under which the Corporation provided cash to these funds as a result of the net asset value per unit of a fund declining below certain thresholds. All capital commitments to these cash funds have been terminated. In 2009 and 2008, the Corporation recorded losses of \$195 million and \$1.1 billion related to these capital commitments.

The Corporation does not consolidate the cash funds managed within *GWIM* because the subordinated support provided by the Corporation did not absorb a majority of the variability created by the assets of the funds. In reaching this conclusion, the Corporation considered both interest rate and credit risk. The cash funds had total assets under management of \$104.4 billion and \$185.9 billion at December 31, 2009 and 2008.

In connection with federal and state securities regulators, the Corporation agreed to purchase at par ARS held by certain customers. During 2009, the Corporation purchased a net \$3.8 billion of ARS from its customers. At December 31, 2009, the Corporation's outstanding buyback commitment was \$291 million.

In addition, the Corporation has entered into agreements with providers of market data, communications, systems consulting and other office-related services. At December 31, 2009, the minimum fee commitments over the remaining life of these agreements totaled \$2.3 billion.

### Other Guarantees

#### Bank-owned Life Insurance Book Value Protection

The Corporation sells products that offer book value protection to insurance carriers who offer group life insurance policies to corporations, primarily banks. The book value protection is provided on portfolios of intermediate investment-grade fixed income securities and is intended to cover any shortfall in the event that policyholders surrender their policies and market value is below book value. To manage its exposure, the Corporation imposes significant restrictions on surrenders and the manner in which the portfolio is liquidated and the funds are accessed. In addition, investment parameters of the underlying portfolio are restricted. These constraints, combined with structural protections, including a cap on the amount of risk assumed on each policy, are designed to provide adequate buffers and guard against payments even under extreme stress scenarios. These guarantees are recorded as derivatives and carried at fair value in the trading portfolio. At December 31, 2009 and 2008, the notional amount of these guarantees totaled \$15.6 billion and \$15.1 billion and the Corporation's maximum exposure related to these guaran - -

tees totaled \$4.9 billion and \$4.8 billion with estimated maturity dates between 2030 and 2040. As of December 31, 2009 and 2008, the Corporation has not made a payment under these products. The probability of surrender has increased due to investment manager underperformance and the deteriorating financial health of policyholders, but remains a small percentage of total notional.

#### Employee Retirement Protection

The Corporation sells products that offer book value protection primarily to plan sponsors of Employee Retirement Income Security Act of 1974 (ERISA) governed pension plans, such as 401(k) plans and 457 plans. The book value protection is provided on portfolios of intermediate/short-term investment-grade fixed income securities and is intended to cover any shortfall in the event that plan participants continue to withdraw funds after all securities have been liquidated and there is remaining book value. The Corporation retains the option to exit the contract at any time. If the Corporation exercises its option, the purchaser can require the Corporation to purchase high quality fixed income securities, typically government or government-backed agency securities, with the proceeds of the liquidated assets to assure the return of principal. To manage its exposure, the Corporation imposes significant restrictions and constraints on the timing of the withdrawals, the manner in which the portfolio is liquidated and the funds are accessed, and the investment parameters of the underlying portfolio. These constraints, combined with structural protections, are designed to provide adequate buffers and guard against payments even under extreme stress scenarios. These guarantees are recorded as derivatives and carried at fair value in the trading portfolio. At December 31, 2009 and 2008, the notional amount of these guarantees totaled \$36.8 billion and \$37.4 billion with estimated maturity dates between 2010 and 2014 if the exit option is exercised on all deals. As of December 31, 2009 and 2008, the Corporation has not made a payment under these products and has assessed the probability of payments under these guarantees as remote.

#### Indemnifications

In the ordinary course of business, the Corporation enters into various agreements that contain indemnifications, such as tax indemnifications, whereupon payment may become due if certain external events occur, such as a change in tax law. The indemnification clauses are often standard contractual terms and were entered into in the normal course of business based on an assessment that the risk of loss would be remote. These agreements typically contain an early termination clause that permits the Corporation to exit the agreement upon these events. The maximum potential future payment under indemnification agreements is difficult to assess for several reasons, including the occurrence of an external event, the inability to predict future changes in tax and other laws, the difficulty in determining how such laws would apply to parties in contracts, the absence of exposure limits contained in standard contract language and the timing of the early termination clause. Historically, any payments made under these guarantees have been de minimis. The Corporation has assessed the probability of making such payments in the future as remote.

#### Merchant Services

On June 26, 2009, the Corporation contributed its merchant processing business to a joint venture in exchange for a 46.5 percent ownership interest in the joint venture. The Corporation indemnified the joint venture for any losses resulting from transactions processed through June 26, 2009 on the contributed merchant portfolio.

The Corporation, on behalf of the joint venture, provides credit and debit card processing services to various merchants by processing credit and debit card transactions on the merchants' behalf. In connection with these services, a liability may arise in the event of a billing dispute between the merchant and a cardholder that is ultimately resolved in the

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cardholder's favor and the merchant defaults upon its obligation to reimburse the cardholder. A cardholder, through its issuing bank, generally has until the later of up to six months after the date a transaction is processed or the delivery of the product or service to present a chargeback to the joint venture as the merchant processor. If the joint venture is unable to collect this amount from the merchant, it bears the loss for the amount paid to the cardholder. The joint venture is primarily liable for any losses on transactions from the contributed portfolio that occur after June 26, 2009. However, if the joint venture fails to meet its obligation to reimburse the cardholder for disputed transactions, then the Corporation could be held liable for the disputed amount. In 2009 and 2008, the Corporation processed \$323.8 billion and \$369.4 billion of transactions and recorded losses as a result of these chargebacks of \$26 million and \$21 million.

At December 31, 2009 and 2008, the Corporation, on behalf of the joint venture, held as collateral \$26 million and \$38 million of merchant escrow deposits which may be used to offset amounts due from the individual merchants. The joint venture also has the right to offset any payments with cash flows otherwise due to the merchant. Accordingly, the Corporation believes that the maximum potential exposure is not representative of the actual potential loss exposure. The Corporation believes the maximum potential exposure for chargebacks would not exceed the total amount of merchant transactions processed through Visa and MasterCard for the last six months, which represents the claim period for the cardholder, plus any outstanding delayed-delivery transactions. As of December 31, 2009 and 2008, the maximum potential exposure totaled approximately \$131.0 billion and \$147.1 billion. The Corporation does not expect to make material payments in connection with these guarantees. The maximum potential exposure disclosed above does not include volumes processed by First Data contributed portfolios.

### Brokerage Business

For a portion of the Corporation's brokerage business, the Corporation has contracted with a third party to provide clearing services that include underwriting margin loans to the Corporation's clients. This contract stipulates that the Corporation will indemnify the third party for any margin loan losses that occur in its issuing margin to the Corporation's clients. The maximum potential future payment under this indemnification was \$657 million and \$577 million at December 31, 2009 and 2008. Historically, any payments made under this indemnification have not been material. As these margin loans are highly collateralized by the securities held by the brokerage clients, the Corporation has assessed the probability of making such payments in the future as remote. This indemnification would end with the termination of the clearing contract.

### Other Derivative Contracts

The Corporation funds selected assets, including securities issued by CDOs and CLOs, through derivative contracts, typically total return swaps, with third parties and SPEs that are not consolidated on the Corporation's Consolidated Balance Sheet. At December 31, 2009, the total notional amount of these derivative contracts was approximately \$4.9 billion with commercial banks and \$2.8 billion with SPEs. The underlying securities are senior securities and substantially all of the Corporation's exposures are insured. Accordingly, the Corporation's exposure to loss consists principally of counterparty risk to the insurers. In certain circumstances, generally as a result of ratings downgrades, the Corporation may be required to purchase the underlying assets, which would not result in additional gain or loss to the Corporation as such exposure is already reflected in the fair value of the derivative contracts.

### Other Guarantees

The Corporation sells products that guarantee the return of principal to investors at a preset future date. These guarantees cover a broad range of underlying asset classes and are designed to cover the shortfall between the market value of the underlying portfolio and the principal amount on the preset future date. To manage its exposure, the Corporation requires that these guarantees be backed by structural and investment constraints and certain pre-defined triggers that would require the underlying assets or portfolio to be liquidated and invested in zero-coupon bonds that mature at the preset future date. The Corporation is required to fund any shortfall at the preset future date between the proceeds of the liquidated assets and the purchase price of the zero-coupon bonds. These guarantees are recorded as derivatives and carried at fair value in the trading portfolio. At December 31, 2009 and 2008, the notional amount of these guarantees totaled \$2.1 billion and \$1.3 billion. These guarantees have various maturities ranging from two to five years. At December 31, 2009 and 2008, the Corporation had not made a payment under these products and has assessed the probability of payments under these guarantees as remote.

The Corporation has entered into additional guarantee agreements, including lease end obligation agreements, partial credit guarantees on certain leases, real estate joint venture guarantees, sold risk participation swaps and sold put options that require gross settlement. The maximum potential future payment under these agreements was approximately \$3.6 billion and \$7.3 billion at December 31, 2009 and 2008. The estimated maturity dates of these obligations are between 2010 and 2033. The Corporation has made no material payments under these guarantees.

In addition, the Corporation has guaranteed the payment obligations of certain subsidiaries of Merrill Lynch on certain derivative transactions. The aggregate amount of such derivative liabilities was approximately \$2.5 billion at December 31, 2009.

### Litigation and Regulatory Matters

In the ordinary course of business, the Corporation and its subsidiaries are routinely defendants in or parties to many pending and threatened legal actions and proceedings, including actions brought on behalf of various classes of claimants. Certain of these actions and proceedings are based on alleged violations of consumer protection, securities, environmental, banking, employment and other laws. In certain of these actions and proceedings, claims for substantial monetary damages are asserted against the Corporation and its subsidiaries.

In the ordinary course of business, the Corporation and its subsidiaries are also subject to regulatory examinations, information gathering requests, inquiries and investigations. Certain subsidiaries of the Corporation are registered broker/dealers or investment advisors and are subject to regulation by the SEC, the Financial Industry Regulatory Authority (FINRA), the New York Stock Exchange, the Financial Services Authority and other domestic, international and state securities regulators. In connection with formal and informal inquiries by those agencies, such subsidiaries receive numerous requests, subpoenas and orders for documents, testimony and information in connection with various aspects of their regulated activities.

In view of the inherent difficulty of predicting the outcome of such litigation and regulatory matters, particularly where the claimants seek very large or indeterminate damages or where the matters present novel legal theories or involve a large number of parties, the Corporation cannot state with confidence what the eventual outcome of the pending matters will be, what the timing of the ultimate resolution of these matters will be, or what the eventual loss, fines or penalties related to each pending matter may be.

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In accordance with applicable accounting guidance, the Corporation establishes reserves for litigation and regulatory matters when those matters present loss contingencies that are both probable and estimable. When loss contingencies are not both probable and estimable, the Corporation does not establish reserves. In some of the matters described below, including but not limited to the Lehman Brothers Holdings, Inc. matters, loss contingencies are not both probable and estimable in the view of management, and accordingly, reserves have not been established for those matters. Based on current knowledge, management does not believe that loss contingencies, if any, arising from pending litigation and regulatory matters, including the litigation and regulatory matters described below, will have a material adverse effect on the consolidated financial position or liquidity of the Corporation, but may be material to the Corporation's results of operations for any particular reporting period.

### Adelphia Litigation

Adelphia Recovery Trust is the plaintiff in a lawsuit pending in the U.S. District Court for the Southern District of New York, entitled *Adelphia Recovery Trust v. Bank of America, N.A., et al.*. The lawsuit was filed on July 6, 2003 and originally named over 700 defendants, including Bank of America, N.A. (BANA), Banc of America Securities LLC (BAS), Merrill Lynch, Merrill Lynch Capital Corp., Fleet National Bank and Fleet Securities, Inc. (collectively Fleet) and other affiliated entities, and asserted over 50 claims under federal statutes and state common law relating to loans and other services provided to various affiliates of Adelphia Communications Corporation (ACC) and entities owned by members of the founding family of ACC. The plaintiff seeks compensatory damages of approximately \$5 billion, plus fees, costs and exemplary damages. The District Court granted in part defendants' motions to dismiss, which resulted in the dismissal of approximately 650 defendants from the lawsuit. The plaintiff appealed the dismissal decision. The primary claims remaining against BANA, BAS, Merrill Lynch, Merrill Lynch Capital Corp. and Fleet include fraud, aiding and abetting fraud and aiding and abetting breach of fiduciary duty. There are several pending defense motions for summary judgment. Trial is scheduled for September 13, 2010.

### Auction Rate Securities Claims

On March 25, 2008, a putative class action, entitled *Burton v. Merrill Lynch & Co., Inc., et al.*, was filed in the U.S. District Court for the Southern District of New York against Merrill Lynch Pierce, Fenner and Smith Incorporated (MLPF&S) and Merrill Lynch on behalf of persons who purchased and continue to hold ARS offered for sale by MLPF&S between March 25, 2003 and February 13, 2008. The complaint alleges, among other things, that MLPF&S failed to disclose material facts about ARS. A similar action, entitled *Stanton v. Merrill Lynch & Co., Inc., et al.*, was filed the next day in the same court. On October 31, 2008, the two cases, entitled *In Re Merrill Lynch Auction Rate Securities Litigation*, were consolidated, and, on December 10, 2008, plaintiffs filed a consolidated class action amended complaint. Plaintiffs seek to recover alleged losses in the market value of ARS allegedly caused by the decision of MLPF&S and Merrill Lynch to discontinue supporting auctions for ARS. Plaintiffs seek unspecified damages, including rescission, other compensatory and consequential damages, costs, fees and interest. On February 27, 2009, defendants filed a motion to dismiss the consolidated amended complaint in *In Re Merrill Lynch Auction Rate Securities Litigation*. On May 22, 2009, the plaintiffs filed a second amended consolidated complaint. On July 24, 2009, Merrill Lynch filed a motion to dismiss the second amended consolidated complaint.

On May 22, 2008, a putative class action, entitled *Bondar v. Bank of America Corporation*, was filed in the U.S. District Court for the Northern

District of California against the Corporation, Banc of America Investment Services, Inc. (BAI) and BAS on behalf of persons who purchased ARS from the defendants. The amended complaint, which was filed on January 22, 2009, alleges, among other things, that the Corporation, BAI and BAS manipulated the market for, and failed to disclose material facts about ARS, and seeks to recover unspecified damages for losses in the market value of ARS allegedly caused by the decision of BAS and other broker/dealers to discontinue supporting auctions for ARS. On February 12, 2009, the Judicial Panel on Multidistrict Litigation (MDL Panel) consolidated Bondar and two related, individual federal actions into one proceeding in the U.S. District Court for the Northern District of California. On September 9, 2009, defendants filed their motion to dismiss the second amended consolidated complaint.

On September 4, 2008, two civil antitrust putative class actions, *Mayor and City Council of Baltimore, Maryland v. Citigroup et al.*, and *Mayfield et al. v. Citigroup Inc. et al.*, were filed in the U.S. District Court for the Southern District of New York against the Corporation, Merrill Lynch, and other financial institutions alleging that the defendants conspired to restrain trade in ARS by artificially supporting auctions and later withdrawing that support. *City Council of Baltimore* is filed on behalf of a class of issuers of ARS underwritten by the defendants between May 12, 2003 and February 13, 2008 who seek to recover the alleged above-market interest payments they claim they were forced to make when the Corporation, Merrill Lynch and others allegedly discontinued supporting ARS. In addition, the plaintiffs who also purchased ARS seek to recover claimed losses in the market value of those securities allegedly caused by the decision of the financial institutions to discontinue supporting auctions for the securities. These plaintiffs seek treble damages and seek to rescind at par their purchases of ARS. *Mayfield* is filed on behalf of a class of persons who acquired ARS directly from defendants and who held those securities as of February 13, 2008. Plaintiffs seek to recover alleged losses in the market value of ARS allegedly caused by the decision of the Corporation and Merrill Lynch and others to discontinue supporting auctions for the securities. Plaintiffs seek treble damages and seek to rescind at par their purchases of ARS. On January 15, 2009, defendants, including the Corporation and Merrill Lynch, filed a motion to dismiss the complaints. On January 25, 2010, the District Court dismissed the two cases with prejudice.

Since October 2007, numerous arbitrations and individual lawsuits have been filed against the Corporation, BANA, BAS, BAI, MLPF&S and in some cases Merrill Lynch by parties who purchased ARS. Plaintiffs in these cases, which assert substantially the same types of claims, allege that defendants manipulated the market for, and failed to disclose material facts about, ARS. Plaintiffs seek compensatory and punitive damages totaling in excess of \$2.6 billion as well as rescission, among other relief.

### Countrywide Bond Insurance Litigation

On September 30, 2008, Countrywide Financial Corporation (CFC) and other Countrywide entities were named as defendants in an action filed by MBIA Insurance Corporation (MBIA), entitled *MBIA Insurance Corporation, Inc. v. Countrywide Home Loans, et al.*, in New York Supreme Court, New York County. The action relates to bond insurance policies provided by MBIA with regard to certain securitized pools of home equity lines of credit and fixed-rate second lien mortgage loans. MBIA allegedly has paid claims as a result of defaults in the underlying loans, and claims that these defaults are the result of improper underwriting. On August 24, 2009, MBIA filed an amended complaint in the action, which includes allegations regarding five additional securitizations, and adds the Corporation and Countrywide Home Loans Servicing, LP as defendants. The amended complaint alleges misrepresentation and breach of contract,

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among other claims, and seeks unspecified actual and punitive damages, and attorneys' fees from the Countrywide defendants and from the Corporation as an alleged successor to the Countrywide defendants. On October 9, 2009, the Corporation and the Countrywide defendants filed a motion to dismiss certain claims asserted in the amended complaint.

On January 28, 2009, Syncora Guarantee Inc. (Syncora) filed suit, entitled *Syncora Guarantee Inc. v. Countrywide Home Loans, Inc., et al.*, in New York Supreme Court, New York County against CFC and certain other Countrywide entities. The action relates to bond insurance policies provided by Syncora with regard to certain securitized pools of home equity lines of credit. Syncora allegedly has paid claims as a result of defaults in the underlying loans, and claims that these defaults are the result of improper loan underwriting. The complaint alleges misrepresentation and breach of contract, among other claims, and seeks unspecified actual and punitive damages, and attorneys' fees. The defendants have moved to dismiss certain of the claims.

On July 10, 2009, MBIA filed a complaint, entitled *MBIA Insurance Corporation, Inc. v. Bank of America Corporation, Countrywide Financial Corporation, Countrywide Home Loans, Inc., Countrywide Securities Corporation, et al.*, in Superior Court of the State of California, County of Los Angeles, against the Corporation, CFC, various Countrywide entities and other individuals and entities. MBIA, which amended the complaint on November 3, 2009, purports to bring the action as subrogee to the note holders for certain securitized pools of home equity lines of credit and fixed-rate second lien mortgage loans. The complaint is based upon the same allegations set forth in the complaints filed in the *MBIA Insurance Corporation Inc., v. Countrywide Home Loan et al.*, action and asserts claims for, among other things, misrepresentation, breach of contract, and violations of certain California statutes. The complaint seeks unspecified damages and declaratory relief. On December 4, 2009, the Corporation and various defendants filed demurrers in response to the amended complaint.

On December 11, 2009, Financial Guaranty Insurance Company (FGIC) filed a complaint, entitled *Financial Guaranty Insurance Co., v. Countrywide Home Loans, Inc.*, in New York Supreme Court, New York County, against Countrywide Home Loans, Inc. The action relates to bond insurance policies provided by FGIC with regard to certain securitized pools of home equity lines of credit and fixed-rate second lien mortgage loans. FGIC allegedly has paid claims as a result of defaults in the underlying loans, and claims that these defaults are the result of improper loan underwriting. The complaint alleges misrepresentation and breach of contract, among other claims, and seeks unspecified actual and punitive damages, and attorneys' fees.

### Countrywide Equity and Debt Securities Matters

CFC, certain other Countrywide entities, and certain former officers and directors of CFC, among others, have been named as defendants in two putative class actions filed in the U.S. District Court for the Central District of California relating to certain CFC equity and debt securities. One case, entitled *In re Countrywide Financial Corp. Securities Litigation*, was filed on January 25, 2008 by certain New York state and municipal pension funds on behalf of purchasers of CFC's common stock and certain other equity and debt securities. The complaint alleges, among other things, that CFC made misstatements (including in certain SEC filings) concerning the nature and quality of its loan underwriting practices and its financial results, in violation of the antifraud provisions of the Securities Exchange Act of 1934 and Sections 11 and 12 of the Securities Act of 1933. Plaintiffs also assert claims against BAS, MLPF&S and other underwriter defendants under Sections 11 and 12 of the Securities Act of 1933. Plaintiffs seek unspecified compensatory damages, among other remedies. On December 1, 2008, the court granted in part and denied in

part the defendants' motions to dismiss the first consolidated amended complaint, with leave to amend certain claims. Plaintiffs filed a second consolidated amended complaint. On April 6, 2009, the District Court denied the motions to dismiss the amended complaint made by CFC and the underwriters. On December 9, 2009, the District Court granted in part and denied in part plaintiffs' motion for class certification. On December 23, 2009, defendants sought interlocutory appeal of certain aspects of the District Court's class certification decision. Trial is scheduled for August 2010.

The other case, entitled *Argent Classic Convertible Arbitrage Fund L.P. v. Countrywide Financial Corp. et al.*, was filed in the U.S. District Court for the Central District of California on October 5, 2007 against CFC on behalf of purchasers of certain Series A and B debentures issued in various private placements pursuant to a May 16, 2007 CFC offering memorandum. This matter involves allegations similar to those in the *In re Countrywide Financial Corporation Securities Litigation* case, asserts claims under the antifraud provisions of the Securities Exchange Act of 1934 and California state law, and seeks unspecified damages. Plaintiff filed an amended complaint that added the Corporation as a defendant. On March 9, 2009, the District Court dismissed the Corporation from the case; CFC remains as a named defendant. On December 9, 2009, the District Court denied plaintiff's motion for class certification. CFC and Argent Classic, on its own behalf, have reached a settlement in principle to dismiss the case with prejudice subject to execution of a definitive settlement agreement. Trial is scheduled for July 2010.

CFC has also responded to subpoenas from the SEC and the U.S. Department of Justice (the DOJ).

### Countrywide FTC Investigation

On June 20, 2008, the Federal Trade Commission (FTC) issued Civil Investigative Demands to CFC regarding Countrywide's mortgage servicing practices. On January 6, 2010, FTC Staff sent a letter to the Corporation offering an opportunity to discuss settlement and enclosing a proposed consent order and draft complaint that reflects FTC Staff's views that certain servicing practices of Countrywide Home Loans, Inc., and Countrywide Home Loans Servicing, LP, which is now known as BAC Home Loans Servicing, LP, violate Section 5 of the Federal Trade Commission Act (the FTC Act) and the Fair Debt Collection Practices Act. FTC Staff also advised that if consent negotiations are not successful, it will recommend that an enforcement action seeking injunctive relief and consumer redress be filed against Countrywide Home Loans, Inc. and BAC Home Loans Servicing, LP for violations of Section 5 of the FTC Act and the Fair Debt Collections Practices Act. The Corporation believes that the servicing practices of Countrywide Home Loans, Inc. and BAC Home Loans Servicing, LP did not and do not violate Section 5 of the FTC Act and the Fair Debt Collections Practices Act. The Corporation is currently involved in discussions with FTC Staff concerning the Staff's views.

### Countrywide Mortgage-Backed Securities Litigation

CFC, certain other Countrywide entities, certain former CFC officers and directors, as well as BAS and MLPF&S, are named as defendants in a consolidated putative class action, entitled *Luther v. Countrywide Home Loans Servicing LP, et al.*, filed on November 14, 2007 in the Superior Court of the State of California, County of Los Angeles, that relates to public offerings of various MBS. The consolidated complaint alleges, among other things, that the mortgage loans underlying these securities were improperly underwritten and failed to comply with the guidelines and processes described in the applicable registration statements and prospectus supplements, in violation of Sections 11 and 12 of the Securities Act of 1933, and seeks unspecified compensatory damages, among other relief. In March 2009, defendants moved to dismiss the case in the

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Superior Court. On June 15, 2009, the Superior Court entered an order staying the state court proceeding and directing the plaintiffs to file suit in Federal Court. On August 24, 2009, the plaintiffs filed a complaint in the U.S. District Court for the Central District of California seeking a declaratory judgment that the Superior Court had subject matter jurisdiction over their claims. The District Court dismissed the declaratory judgment action. On January 6, 2010, the Superior Court lifted the stay entered on June 15, 2009 and dismissed plaintiffs' consolidated complaint with prejudice for lack of subject matter jurisdiction. On January 14, 2010, one of the plaintiffs in the *Luther* case, the Maine State Retirement System, filed a new putative class action complaint in the U.S. District Court for the Central District of California entitled *Maine State Retirement System v. Countrywide Financial Corporation, et al.* The complaint names CFC, certain other Countrywide entities, certain former CFC officers and directors, as well as BAS and MLPF&S as defendants. Plaintiffs' allegations, claims and remedies sought are substantially similar and concern the same offerings of MBS at issue in the *Luther* case that was dismissed by the Superior Court.

On August 15, 2008, a complaint, entitled *New Mexico State Investment Council, et al. v. Countrywide Financial Corporation, et al.*, was filed in the First Judicial Court for the County of Santa Fe against CFC, certain other CFC entities and certain former officers and directors of CFC by three New Mexico governmental entities that allegedly acquired certain of the MBS also at issue in the *Luther* case. The complaint initially asserted claims under the Securities Act of 1933 and New Mexico state law and seeks unspecified compensatory damages and rescission. On March 25, 2009, the court denied the motion to dismiss the complaint. The individual defendants were dismissed based on lack of personal jurisdiction. On November 13, 2009, plaintiffs voluntarily dismissed the New Mexico state law claims. Trial is scheduled for October 2010.

On October 13, 2009, the Federal Home Loan Bank of Pittsburgh (FHLB Pittsburgh) filed a complaint, entitled *Federal Home Loan Bank of Pittsburgh v. Countrywide Securities Corporation et al.*, in the Court of Common Pleas of Allegheny County Pennsylvania against CFC, Countrywide Securities Corporation (CSC), Countrywide Home Loans, Inc., CWALT, Inc. and CWMBS, Inc., among other defendants, alleging violations of the Securities Act of 1933 and the Pennsylvania Securities Act of 1972, as well as fraud and negligent misrepresentation under Pennsylvania common law in connection with various offerings of MBS. The complaint asserts, among other things, misstatements and omissions concerning the credit quality of the mortgage loans underlying the securities and the loan origination practices associated with those loans and seeks unspecified damages and rescission, among other relief. The Countrywide defendants moved to dismiss the complaint on February 26, 2010.

On December 23, 2009, the Federal Home Loan Bank of Seattle (FHLB Seattle) filed three complaints in the Superior Court of Washington for King County alleging violations of the Securities Act of Washington in connection with various offerings of MBS and makes allegations similar to those in the FHLB Pittsburgh matter. The complaints seek rescission, interest, costs and attorneys' fees. The case, entitled *Federal Home Loan Bank of Seattle v. Banc of America Securities LLC, et al.*, was filed against CFC, CWALT, Inc., BAS, Banc of America Funding Corporation, and the Corporation. The case, entitled *Federal Home Loan Bank of Seattle v. Countrywide Securities Corporation, et al.*, was filed against CFC, CSC, CWALT, Inc., Merrill Lynch Mortgage Investors, Inc., and Merrill Lynch Mortgage Capital, Inc. The case, entitled *Federal Home Loan Bank of Seattle v. UBS Securities LLC, et al.*, was filed against CFC, CWMBS, Inc., CWALT, Inc., and UBS Securities LLC.

### Data Treasury Litigation

The Corporation and BANA were named as defendants in two cases filed by Data Treasury Corporation (Data Treasury) in the U.S. District Court for the Eastern District of Texas. In one case filed on June 25, 2005 (Ballard), Data Treasury alleged that defendants "provided, sold, installed, utilized, and assisted others to use and utilize image-based banking and archival solutions" in a manner that infringed United States Patent Nos. 5,910,988 and 6,032,137. In the other case filed on February 24, 2006 (Huntington), Data Treasury alleged that the Corporation and BANA, along with LaSalle Bank Corporation and LaSalle Bank, N.A., were "making, using, selling, offering for sale, and/or importing into the United States, directly, contributory, and/or by inducement, without authority, products and services that fall within the scope of the claims of" United States Patent Nos. 5,265,007; 5,583,759; 5,717,868; and 5,930,778. The Huntington case also claimed infringement against the LaSalle defendants of the patents at issue in the Ballard case. The Ballard and Huntington cases are now consolidated in the *Data Treasury Corporation v. Wells Fargo, et al.*, action, although the claims related to the Huntington patents are currently stayed. Data Treasury seeks significant compensatory damages and equitable relief in the Ballard case and unspecified compensatory damages and injunctive relief in the Huntington case. The District Court has scheduled the Ballard case for trial in October 2010.

### Enron Litigation

On April 8, 2002, Merrill Lynch and MLPF&S were added as defendants in a consolidated class action, entitled *Newby v. Enron Corp. et al.*, filed in the U.S. District Court for the Southern District of Texas on behalf of certain purchasers of Enron's publicly traded equity and debt securities. The complaint alleges, among other things, that Merrill Lynch and MLPF&S engaged in improper transactions that helped Enron misrepresent its earnings and revenues. On March 5, 2009, the District Court granted Merrill Lynch and MLPF&S's motion for summary judgment and dismissed the claims against Merrill Lynch and MLPF&S with prejudice. Subsequently, the lead plaintiff, Merrill Lynch and certain other defendants filed a motion to dismiss and for entry of final judgment. The District Court granted the motion on December 2, 2009 and dismissed all claims against Merrill Lynch and MLPF&S with prejudice.

### Heilig-Meyers Litigation

In *AIG Global Securities Lending Corp., et al. v. Banc of America Securities LLC*, filed on December 7, 2001 and formerly pending in the U.S. District Court for the Southern District of New York, the plaintiffs purchased ABS issued by a trust formed by Heilig-Meyers Co., and allege that BAS, as underwriter, made misrepresentations in connection with the sale of those securities in violation of the federal securities laws and New York common law. The case was tried and a jury rendered a verdict against BAS in favor of the plaintiffs for violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 and for common law fraud. The jury awarded aggregate compensatory damages of \$84.9 million plus prejudgment interest totaling approximately \$59 million. On May 14, 2009, the District Court denied BAS's post trial motions to set aside the verdict. BAS has filed an appeal in the U.S. Court of Appeals for the Second Circuit.

### IndyMac Litigation

On January 20, 2009, BAS and MLPF&S, in their capacity as underwriters, along with IndyMac MBS, IndyMac ABS, and other underwriters and individuals, were named as defendants in a putative class action complaint, entitled *IBEW Local 103 v. Indymac MBS et al.*, filed in the Superior Court of the State of California, County of Los Angeles, by purchasers of IndyMac mortgage pass-through certificates. The complaint

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alleges, among other things, that the mortgage loans underlying these securities were improperly underwritten and failed to comply with the guidelines and processes described in the applicable registration statements and prospectus supplements, in violation of Sections 11 and 12 of the Securities Act of 1933, and seeks unspecified compensatory damages and rescission, among other relief.

On May 14, 2009, the Corporation (as the alleged successor-in-interest to MLPF&S), CSC, IndyMac MBS, IndyMac ABS, and other underwriters and individuals, were named as defendants in a putative class action complaint, entitled *Police & Fire Retirement System of the City of Detroit v. IndyMac MBS, Inc., et al.*, filed in the U.S. District Court for the Southern District of New York. On June 29, 2009, the Corporation (as the alleged successor-in-interest to CSC and MLPF&S) and other underwriters and individuals were named as defendants in another putative class action complaint, entitled *Wyoming State Treasurer, et al. v. John Olinski, et al.*, also filed in the U.S. District Court for the Southern District of New York. The allegations, claims, and remedies sought in these cases are substantially similar to those in the *IBEW Local 103* case. On July 29, 2009, *Police & Fire Retirement System* and *Wyoming State Treasurer* were consolidated by the U.S. District Court for the Southern District of New York and a consolidated amended complaint was filed on October 9, 2009. The consolidated complaint named the Corporation as a defendant based on allegations that the Corporation is the "successor-in-interest" to CSC and MLPF&S. BAS and CSC were not named as defendants. Prior to the consolidation of these matters, the *IBEW Local 103* case was voluntarily dismissed by plaintiffs and its allegations and claims were incorporated into the consolidated amended complaint. A motion to dismiss the consolidated amended complaint was filed on November 23, 2009.

### In re Initial Public Offering Securities Litigation

Beginning in 2001, BAS, Merrill Lynch, MLPF&S, other underwriters, and various issuers and others, were named as defendants in certain putative class action lawsuits that have been consolidated in the U.S. District Court for the Southern District of New York as *In re Initial Public Offering Securities Litigation*. Plaintiffs contend that the defendants failed to make certain required disclosures and manipulated prices of securities sold in initial public offerings through, among other things, alleged agreements with institutional investors receiving allocations to purchase additional shares in the aftermarket and seek unspecified damages. On December 5, 2006, the U.S. Court of Appeals for the Second Circuit reversed the District Court's order certifying the proposed classes. On September 27, 2007, plaintiffs filed a motion to certify modified classes, which defendants opposed. On October 10, 2008, the District Court granted plaintiffs' request to withdraw without prejudice their class certification motion. The parties agreed to settle the matter in an amount that is not material to the Corporation's Consolidated Financial Statements and, on October 5, 2009, the District Court granted final approval of the settlement. Certain objectors to the settlement have filed an appeal of the District Court's certification of the settlement class to the U.S. Court of Appeals for the Second Circuit.

### Interchange and Related Litigation

The Corporation, BANA, BA Merchant Services LLC (f/k/a National Processing, Inc.) and MBNA America Bank, N.A. are defendants in putative class actions filed on behalf of retail merchants that accept Visa and MasterCard payment cards. Additional defendants include Visa, MasterCard, and other financial institutions. Plaintiffs seeking unspecified treble damages and injunctive relief, allege that the defendants conspired to fix the level of interchange and merchant discount fees and that certain other practices, including various Visa and MasterCard rules, violate

federal and California antitrust laws. The class actions, the first of which was filed on June 22, 2005, are coordinated for pre-trial proceedings in the U.S. District Court for the Eastern District of New York, together with individual actions brought only against Visa and MasterCard, under the caption *In Re Payment Card Interchange Fee and Merchant Discount Anti-Trust Litigation*. On January 8, 2008, the District Court dismissed all claims for pre-2004 damages. On May 8, 2008, plaintiffs filed a motion for class certification, which the defendants opposed. On January 29, 2009, the class plaintiffs filed a second amended consolidated complaint.

The class plaintiffs have also filed two supplemental complaints against certain defendants, including the Corporation, BANA, BA Merchant Services LLC (f/k/a National Processing, Inc.) and MBNA America Bank, N.A., relating to MasterCard's 2006 initial public offering (MasterCard IPO) and Visa's 2008 initial public offering (Visa IPO). The supplemental complaints, which seek unspecified treble damages and injunctive relief, assert, among other things, claims under federal antitrust laws. On November 25, 2008, the District Court granted defendants' motion to dismiss the supplemental complaint relating to the MasterCard IPO, with leave to amend. On January 29, 2009, plaintiffs amended the MasterCard IPO supplemental complaint and also filed a supplemental complaint relating to the Visa IPO.

Defendants have filed motions to dismiss the second amended consolidated complaint and the MasterCard IPO and Visa supplemental complaints.

The Corporation and certain of its affiliates have entered into agreements with Visa and other financial institutions that provide for sharing liabilities in connection with certain antitrust litigation against Visa, including the Interchange case (the Visa-Related Litigation). Under these agreements, the Corporation's obligations to Visa in the Visa-Related Litigation are capped at the Corporation's membership interest in Visa USA, which currently is 12.9 percent. Under these agreements, Visa Inc. placed a portion of the proceeds from the Visa IPO into an escrow to fund liabilities arising from the Visa-Related Litigation, including the 2008 settlement of *Discover Financial Services v. Visa USA, et al.* and the 2007 settlement of *American Express Travel Related Services Company v. Visa USA, et al.* Since the Visa IPO, Visa Inc. has added funds to the escrow, which has the effect of repurchasing Visa Inc. Class A common stock equivalents from the Visa USA members, including the Corporation.

### Lehman Brothers Holdings, Inc. Litigation

Beginning in September 2008, BAS, MLPF&S, CSC and LaSalle Financial Services Inc., along with other underwriters and individuals, were named as defendants in several putative class action complaints filed in the U.S. District Court for the Southern District of New York and state courts in Arkansas, California, New York and Texas. Plaintiffs allege that the underwriter defendants violated Sections 11 and 12 of the Securities Act of 1933 by making false or misleading disclosures in connection with various debt and convertible stock offerings of Lehman Brothers Holdings, Inc. and seek unspecified damages. All cases against the defendants have now been transferred or conditionally transferred to the multi-district litigation captioned *In re Lehman Brothers Securities and ERISA Litigation* pending in the U.S. District Court for the Southern District of New York. BAS, MLPF&S and other defendants moved to dismiss the consolidated amended complaint.

### Lehman Set-off Litigation

On November 26, 2008, BANA commenced an adversary proceeding against Lehman Brothers Holdings, Inc. (LBHI) and Lehman Brothers Special Financing, Inc. (LBSF) in LBHI's and LBSF's Chapter 11 bankruptcy proceedings in the U.S. Bankruptcy Court for the Southern District



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of New York. In the adversary proceeding, BANA is seeking a declaration that it properly set-off funds held in Lehman deposit accounts against monies owed to BANA by LBSF and LBHI under various derivatives and guarantee agreements. LBSF and LBHI answered the complaint, and LBHI filed counterclaims against BANA and Bank of America Trust and Banking Corporation (Cayman) Limited (BofA Cayman) on January 2, 2009, alleging that BANA's set-off was improper and violated the automatic stay in bankruptcy. LBHI's counterclaims sought among other relief, the return of the set-off funds. BANA and BofA Cayman filed their answer to LBHI's counterclaims, which denied the material allegations of the counterclaims, on February 9, 2009. On July 23, 2009, LBHI voluntarily dismissed its counterclaims against BofA Cayman, but BANA remains a defendant. On September 14, 2009, LBHI, LBSF and BANA submitted cross-motions for summary judgment.

### Lyondell Litigation

On July 23, 2009, an adversary proceeding, entitled *Official Committee of Unsecured Creditors v. Citibank, N.A., et al.*, was filed in the U.S. Bankruptcy Court for the Southern District of New York. This adversary proceeding, in which MLPF&S, Merrill Lynch Capital Corporation and more than 50 other individuals and entities were named as defendants, relates to ongoing Chapter 11 bankruptcy proceedings in *In re Lyondell Chemical Company, et al.* The plaintiff in the adversary proceeding, the Official Committee of Unsecured Creditors of Lyondell Chemical Company (the Committee), alleged in its complaint that certain loans made and liens granted in connection with the December 20, 2007 merger between Lyondell Chemical Company and Basell AF S.C.A. were avoidable fraudulent transfers under state and federal fraudulent transfer laws. MLPF&S is named as a defendant in its capacity as: (i) a joint lead arranger under a senior credit facility and individually as lender thereunder; and (ii) a joint lead arranger under a bridge loan facility and individually as lender thereunder. Merrill Capital Corporation is named as a defendant in its capacity as: (i) a joint lead arranger under the senior credit facility and individually as lender thereunder; and (ii) administrative agent under the bridge loan facility. The Committee sought both to avoid the obligations under the loans made under the facilities and to recover fees and interest paid in connection therewith. The Committee also sought unspecified damages from MLPF&S for allegedly aiding and abetting a breach of fiduciary duty in connection with its role as advisor to Basell's parent company, Access Industries.

On October 1, 2009, a second adversary proceeding, entitled *The Wilmington Trust Co. v. LyondellBasell Industries AF S.C.A., et al.*, was filed in the U.S. Bankruptcy Court for the Southern District of New York. This adversary proceeding, in which MLPF&S, Merrill Lynch Capital Corporation and Merrill Lynch International Bank Limited (MLIB) along with more than 70 other entities are named defendants, was filed by the successor trustee for holders of certain Lyondell senior notes, and asserts causes of action for declaratory judgment, breach of contract, and equitable subordination. The complaint alleges that the 2007 leveraged buyout of Lyondell violated a 2005 intercreditor agreement executed in connection with the August 2005 issuance of the Lyondell senior notes and therefore asks the Bankruptcy Court to declare the 2007 intercreditor agreement, and specifically the debt priority provisions contained therein, null and void. The breach of contract action, brought against Merrill Lynch Capital Corporation and one other entity as signatories to the 2005 intercreditor agreement, seeks unspecified damages. The equitable subordination action is brought against all defendants and seeks to subordinate the bankruptcy claims of those defendants to the claims of the holders of the Lyondell senior notes. A motion to dismiss this complaint was filed.

On February 16, 2010, certain defendants, including MLPF&S, Merrill Lynch Capital Corporation and MLIB, advised the Bankruptcy Court that

they have reached a settlement in principal with the Lyondell debtors in bankruptcy, the Committee and Wilmington Trust that would dispose of all claims asserted against MLPF&S, Merrill Lynch Capital Corporation and MLIB in these adversary proceedings. This settlement is not material to the Corporation's Consolidated Financial Statements and is subject to Bankruptcy Court approval.

### MBIA Insurance Corporation CDO Litigation

On April 30, 2009, MBIA and LaCrosse Financial Products, LLC filed a complaint against MLPF&S and Merrill Lynch International, entitled *MBIA Insurance Corporation and LaCrosse Financial Products LLC, v. Merrill Lynch Pierce Fenner & Smith, Inc., et al.*, in New York Supreme Court, New York County. The complaint relates to certain credit default swap (CDS) agreements and insurance agreements by which plaintiffs provided credit protection to the Merrill Lynch entities and other parties on certain CDO securities held by them. Plaintiffs claim that the Merrill Lynch entities did not adequately disclose the credit quality and other risks of the CDO securities and underlying collateral. The complaint alleges claims for fraud, negligent misrepresentation and breach of contract, among other claims, and seeks rescission and unspecified compensatory and punitive damages, among other relief. Defendants filed a motion to dismiss on July 1, 2009.

### Mediafiction Litigation

Approximately a decade ago, MLIB acted as manager for a \$284 million issuance of notes for an Italian library of movies, backed by the future flow of receivables to such movie rights. Mediafiction S.p.A (Mediafiction) was responsible for collecting payments in connection with the rights to the movies and forwarding the payments to MLIB for distribution to note holders. Mediafiction failed to make the required payments to MLIB and a declaration of bankruptcy under Italian law was made with respect to Mediafiction on March 9, 2006. On July 18, 2006, MLIB filed an opposition to have its claims recognized in the Mediafiction bankruptcy proceeding for amounts that Mediafiction failed to pay on the notes. Thereafter, Mediafiction filed a counterclaim alleging that the agreement between MLIB and Mediafiction was null and void and seeking return of the payments previously made by Mediafiction to MLIB. In October 2008, the Court of Rome granted Mediafiction's counter claim against MLIB in the amount of \$137 million. MLIB has appealed the ruling to the Court of Appeals of the Court of Rome.

### Merrill Lynch Acquisition-related Matters

Since January 2009, the Corporation and certain of its current and former officers and directors, among others, have been named as defendants in putative class actions, referred to as the securities actions, brought by shareholders alleging violations of federal securities laws in connection with certain public statements and the proxy statement with respect to the Corporation's acquisition of Merrill Lynch (the Acquisition). Several of these actions have been consolidated and a consolidated amended class action complaint has been filed in the U.S. District Court for the Southern District of New York, as described below.

In addition, several derivative actions, referred to as the derivative actions, have been filed against certain current and former directors and officers of the Corporation, and certain other parties, and the Corporation as nominal defendant, in the federal and state courts, as described below.

Other putative class actions, referred to as the ERISA actions, have been filed in the U.S. District Court for the Southern District of New York against the Corporation and certain of its current and former officers and directors seeking recovery for losses from the Bank of America 401(k) Plan pursuant to ERISA and a consolidated amended class action com - -

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plaint in these ERISA actions has been filed, as described below.

### *In Re Bank of America Securities, Derivative & ERISA Litigation*

On June 10, 2009, the MDL Panel issued an order transferring the actions related to the Acquisition pending in federal courts outside the U.S. District Court for the Southern District of New York for coordinated or consolidated pretrial proceedings with the securities actions, ERISA actions, and derivative actions pending in the U.S. District Court for the Southern District of New York. The securities actions, ERISA actions and derivative actions have been separately consolidated and are now pending under the caption *In re Bank of America Securities, Derivative, and Employment Retirement Income Security Act (ERISA) Litigation*.

On September 25, 2009, plaintiffs in the securities actions in the *In re Bank of America Securities, Derivative and Employment Retirement Income Security Act (ERISA) Litigation* filed a consolidated amended class action complaint. The amended complaint is brought on behalf of a purported class, which consists of purchasers of the Corporation's common and preferred securities between September 15, 2008 and January 21, 2009, holders of the Corporation's common stock or Series B Preferred Stock as of October 10, 2008 and purchasers of the Corporation's common stock issued in the offering that occurred on or about October 7, 2008, and names as defendants the Corporation, Merrill Lynch and certain of their current and former directors, officers and affiliates. The amended complaint alleges violations of Sections 10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934, and SEC rules promulgated thereunder, based on, among other things, alleged false statements and omissions related to: (i) the financial condition and 2008 fourth quarter losses experienced by the Corporation and Merrill Lynch; (ii) due diligence conducted in connection with the Acquisition; (iii) bonus payments to Merrill Lynch employees; and (iv) the Corporation's contacts with government officials regarding the Corporation's consideration of invoking the material adverse change clause in the merger agreement and the possibility of obtaining government assistance in completing the Acquisition. The amended complaint also alleges violations of Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 related to an offering of the Corporation's common stock announced on or about October 6, 2008, and based on, among other things, alleged false statements and omissions related to bonus payments to Merrill Lynch employees and the benefits and impact of the Acquisition on the Corporation, and names BAS and MLPF&S, among others, as defendants on the Section 11 and 12(a)(2) claims. The amended complaint seeks unspecified damages and other relief. On November 24, 2009, the Corporation, BAS, Merrill Lynch, MLPF&S and the officer and director defendants moved to dismiss the consolidated amended class action complaint.

On October 9, 2009, plaintiffs in the derivative actions in the *In re Bank of America Securities, Derivative and Employment Retirement Income Security Act (ERISA) Litigation* filed a consolidated amended derivative and class action complaint. The amended complaint names as defendants certain of the Corporation's current and former directors, officers and financial advisors, and certain of Merrill Lynch's current and former directors and officers. The amended complaint alleges, among other things, that: (i) certain of the Corporation's officers breached fiduciary duties by conducting an inadequate due diligence process surrounding the Acquisition, failing to make adequate disclosures regarding Merrill Lynch's 2008 fourth quarter losses and an alleged agreement to permit Merrill Lynch to pay bonuses, and failing to invoke the material adverse change clause or otherwise renegotiate the Acquisition; (ii) certain of the Corporation's officers and certain Merrill Lynch officers received incentive compensation that was inappropriate in view of the work performed and the results achieved and, therefore, that such person should return unearned compensation; (iii) certain of the Corporation's officers and

directors exposed the Corporation to significant liability under state and federal law and should be held responsible to the Corporation for contribution; (iv) certain Merrill Lynch officers and directors and certain financial advisors to the Corporation aided and abetted breaches of fiduciary duties by causing and/or assisting with the consummation of the Acquisition; and (v) certain of the Corporation's officers and directors, certain of the Merrill Lynch officers and directors and certain of the Corporation's financial advisors violated Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9 promulgated thereunder by allegedly making material misrepresentations and/or material omissions in the proxy statement for the Acquisition and related materials and failing to update those materials to reflect, among other things, Merrill Lynch's 2008 fourth quarter losses and Merrill Lynch's ability and intention to pay bonuses to its employees in 2008. The amended complaint also purports to bring a direct class action claim for breach of a duty of full disclosure and complete candor by failing to correct or update disclosures made in the proxy statement for the Acquisition and for concealing an alleged agreement authorizing Merrill Lynch to pay bonuses. The direct claim is brought on behalf of a purported class of all persons who owned shares of the Corporation's common stock as of October 10, 2008 and is brought against certain of the Corporation's current and former officers and directors. The Corporation is named as a nominal defendant with respect to the derivative claims and is not named as a defendant in the direct class action claim. The amended complaint seeks an unspecified amount of monetary damages, equitable remedies, and other relief. On December 8, 2009, the Corporation, the officer and director defendants and the financial advisors moved to dismiss the consolidated amended derivative and class complaint. On February 8, 2010, the plaintiffs voluntarily dismissed their claims against each of the former Merrill Lynch officers and directors without prejudice.

On October 9, 2009, plaintiffs in the ERISA actions in the *In re Bank of America Securities, Derivative and Employment Retirement Income Security Act (ERISA) Litigation* filed a consolidated amended complaint for breaches of duty under ERISA. The amended complaint is brought on behalf of a purported class that consists of participants in the Corporation's 401(k) Plan, the Corporation's 401(k) Plan for Legacy Companies, the Countrywide Financial Corporation 401(k) Plan (collectively the 401(k) Plans), and the Corporation's Pension Plan. The amended complaint names as defendants the Corporation, members of the Corporation's Corporate Benefits Committee, members of the Compensation and Benefits Committee of the Corporation's Board of Directors and certain of the Corporation's current and former directors and officers. The amended complaint alleges violations of ERISA, based on, among other things: (i) an alleged failure to prudently and loyally manage the 401(k) Plans and Pension Plan by continuing to offer the Corporation's common stock as an investment option or measure for participant contributions; (ii) an alleged failure to monitor the fiduciaries of the 401(k) Plans and Pension Plan; (iii) an alleged failure to provide complete and accurate information to the 401(k) Plans and Pension Plan participants with respect to the Merrill Lynch and Countrywide acquisitions and related matters; and (iv) alleged co-fiduciary liability for these purported fiduciary breaches. The amended complaint seeks an unspecified amount of monetary damages, equitable remedies, and other relief. On December 8, 2009, the Corporation and the officer and director defendants moved to dismiss the consolidated amended complaint.

### *Other Acquisition-related Litigation*

Since January 21, 2009, the Corporation and certain of its current and former directors have been named as defendants in several putative class and derivative actions, including *Rothbaum v. Lewis, Southeastern Pennsylvania Transportation Authority v. Lewis, Tremont Partners LLC v.*

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*Lewis, Kovacs v. Lewis, Stern v. Lewis, and Houx v. Lewis*, brought by shareholders in the Delaware Court of Chancery alleging breaches of fiduciary duties in connection with the Acquisition. On April 27, 2009, the Delaware Court of Chancery consolidated the derivative actions under the caption *In re Bank of America Corporation Stockholder Derivative Litigation*. On April 30, 2009, the putative class claims in the actions, entitled *Stern v. Lewis* and *Houx v. Lewis*, were voluntarily dismissed without prejudice by order of the Chancery Court. On May 8, 2009, plaintiffs filed an amended consolidated complaint in the Chancery Court, asserting claims derivatively on behalf of the Corporation that the defendants breached their fiduciary duty of loyalty by, among other things, failing to make adequate disclosures regarding Merrill Lynch's 2008 fourth quarter losses and bonuses paid to Merrill Lynch employees in 2008 and breached their fiduciary duty of loyalty and committed waste by failing to invoke the material adverse change clause in the merger agreement or otherwise renegotiate the Acquisition. The amended consolidated complaint seeks damages sustained as a result of the alleged wrongdoing, disgorgement of bonuses paid to the defendants and to the Corporation's management team or to former Merrill Lynch executives, as well as attorneys' fees and costs and other equitable relief. On June 19, 2009, the Corporation and the individual defendants filed motions to dismiss. On October 12, 2009, the Chancery Court denied defendants' motions to dismiss.

On February 17, 2009, an additional derivative action, entitled *Cunniff v. Lewis, et al.*, was filed in North Carolina Superior Court. The complaint, which names certain of the Corporation's current and former officers and directors as defendants and names the Corporation as a nominal defendant, alleges that defendants violated fiduciary duties in connection with the Acquisition by, among other things, failing to disclose: (i) the financial condition and 2008 fourth quarter losses experienced by Merrill Lynch and (ii) the extent of the due diligence conducted in connection with the Acquisition. The complaint also brings a cause of action for waste of corporate assets for, among other things, allegedly subjecting the Corporation to potential material liability for securities fraud. The complaint seeks unspecified damages and other relief. On October 6, 2009, the Superior Court granted defendants' motion to stay the action in favor of derivative actions pending in the Delaware Court of Chancery.

On September 25, 2009, an alleged shareholder of the Corporation filed an action against the Corporation, and its then Chief Executive Officer in Superior Court of the State of California, San Francisco County. The complaint alleges state law causes of action for breach of fiduciary duty, misrepresentation and fraud in connection with plaintiff's purchase of the Corporation's common stock, based on alleged failures to disclose information regarding Merrill Lynch's value. The action, entitled *Catalano v. Bank of America*, seeks unspecified damages and other relief. Defendants have removed the action to the U. S. District Court for the Northern District of California, and have requested that the MDL Panel transfer the action to the U.S. District Court for the Southern District of New York for coordinated or consolidated pre-trial proceedings with the related litigation pending in that Court. On December 11, 2009, defendants removed the action to the U.S. District Court for the Northern District of California. On February 5, 2010, the MDL Panel transferred the action to the U.S. District Court for the Southern District of New York for coordinated or consolidated pre-trial proceedings with the related litigation pending in that Court.

On December 22, 2009, the Corporation and certain of its officers were named in a purported class action filed in the U.S. District Court for the Southern District of New York, entitled *Iron Workers of Western Pennsylvania Pension Plan v. Bank of America Corp., et al.* The action is purportedly brought on behalf of all persons who purchased or acquired certain Corporation debt securities between September 15, 2008 and January 21, 2009 and alleges that defendants violated Sections 10(b)

and 20(a) of the Securities Exchange Act of 1934, and SEC rules promulgated thereunder, based on, among other things, alleged false statements and omissions related to: (i) the financial condition and 2008 fourth quarter losses experienced by the Corporation and Merrill Lynch; (ii) due diligence conducted in connection with the Acquisition; (iii) bonus payments to Merrill Lynch employees; and (iv) certain defendants' contacts with government officials regarding the Corporation's consideration of invoking the material adverse change clause in the merger agreement and the possibility of obtaining additional government assistance in completing the Acquisition. The complaint seeks unspecified damages and other relief. The parties in the securities actions in the *In re Bank of America Securities, Derivative and Employment Retirement Income Security Act (ERISA) Litigation* have requested that the District Court consolidate this action with their actions.

On January 13, 2010, the Corporation, Merrill Lynch and certain of the Corporation's current and former officers and directors were named in a purported class action filed in the U.S. District Court for the Southern District of New York entitled *Dornfest v. Bank of America Corp., et al.* The action is purportedly brought on behalf of investors in Corporation option contracts between September 15, 2008 and January 22, 2009 and alleges that during the class period approximately 9.5 million Corporation call option contracts and approximately eight million Corporation put option contracts were already traded on seven of the Options Clearing Corporation exchanges. The complaint alleges that defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and SEC rules promulgated thereunder, based on, among other things, alleged false statements and omissions related to: (i) the financial condition and 2008 fourth quarter losses experienced by the Corporation and Merrill Lynch; (ii) due diligence conducted in connection with the Acquisition; (iii) bonus payments to Merrill Lynch employees; and (iv) certain defendants' contacts with government officials regarding the Corporation's consideration of invoking the material adverse change clause in the merger agreement and the possibility of obtaining additional government assistance in completing the Acquisition. The plaintiff class allegedly suffered damages because they invested in Corporation option contracts at allegedly artificially inflated prices and were adversely affected as the artificial inflation was removed from the market price of the securities. The complaint seeks unspecified damages and other relief. Plaintiffs in the securities actions in the *In re Bank of America Securities, Derivative and Employment Retirement Income Security Act (ERISA) Litigation* have requested that the District Court consolidate this action with their actions.

On February 17, 2010, an alleged shareholder of the Corporation filed a purported derivative action, entitled *Bahnmeier v. Lewis, et al.*, in the U.S. District Court for the Southern District of New York. The complaint names as defendants certain of the Corporation's current and former directors and officers, and one of Merrill Lynch's former officers. The complaint alleges, among other things, that the individual defendants breached their fiduciary duties by failing to provide accurate and complete information to shareholders regarding, among other things: (i) the potential for litigation resulting from Countrywide's lending practices and the risk posed to the Corporation's capital levels as a result of Countrywide's loan losses; (ii) the deterioration of Merrill Lynch's financial condition during the fourth quarter of 2008, which was allegedly sufficient to trigger the material adverse change clause in the merger agreement with Merrill Lynch; (iii) the agreement to permit Merrill Lynch to pay up to \$5.8 billion in bonuses to its employees; and (iv) the discussions with regulators in December 2008 concerning possibly receiving additional government assistance in completing the Acquisition. The complaint also asserts claims against the individual defendants for breach of fiduciary duty by failing to maintain adequate internal controls, unjust enrichment, abuse

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of control and gross mismanagement in connection with the supervision and management of the operations, business and disclosure controls of the Corporation. The Corporation is named as a nominal defendant only and no monetary relief is sought against it. The complaint seeks, among other things, an unspecified amount of monetary damages, equitable remedies and other relief.

### Regulatory Matters

The Corporation and Merrill Lynch have also received and are responding to inquiries from a variety of regulators and governmental authorities relating to among other things: (i) the payment by Merrill Lynch of bonuses for 2008 and disclosures related thereto; (ii) disclosures relating to Merrill Lynch's losses in the fourth quarter of 2008; (iii) disclosures relating to the Corporation's consideration of whether there had been a material adverse change relating to Merrill Lynch and discussions with U.S. government officials in late December 2008; and (iv) the Acquisition and related proxy statement.

On August 3, 2009, the SEC filed a complaint against the Corporation, entitled *SEC v. Bank of America*, in the U.S. District Court for the Southern District of New York, alleging that the Corporation's proxy statement filed on November 3, 2008 failed to disclose the discretionary incentive compensation that Merrill Lynch could award to its employees prior to completion of the Acquisition. On September 14, 2009, the District Court declined to approve a proposed consent judgment agreed to by the Corporation and the SEC. On October 9, 2009, the Corporation's Board of Directors approved a limited waiver of the Corporation's attorney-client and attorney work product privileges as to certain subject matters under investigation by the U.S. Congress, and federal and state regulatory authorities.

On January 12, 2010, the SEC filed a second complaint against the Corporation, entitled *SEC v. Bank of America Corp.*, in the U.S. District Court for the Southern District of New York alleging that the Corporation violated the federal proxy rules for failing to disclose information concerning Merrill Lynch's known and estimated losses prior to the shareholder vote on December 5, 2008, to approve the Acquisition. The SEC alleges that the Corporation was required to describe in its proxy and registration statement any material changes in Merrill Lynch's affairs that were not already reflected in Merrill Lynch's quarterly reports or certain other public filings, and to update shareholders on any "fundamental change" arising after the effective date of the registration statement. The SEC alleges that the Corporation's failure to provide such an update violated Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9 thereunder. The SEC is seeking an injunction against the Corporation to prohibit any future violations of Section 14(a) and Rule 14a-9, as well as an unspecified civil monetary penalty.

On February 1, 2010, the Corporation entered into a proposed settlement with the SEC to resolve all cases filed by the SEC relating to the Acquisition. Also, on February 4, 2010, the Corporation entered into an agreement with the Office of the Attorney General for the State of North Carolina (NC AG) to resolve all matters that are the subject of an investigation by that Office relating to the Acquisition. Under the terms of the proposed settlements, the Corporation agreed, without admitting or denying any wrongdoing, to pay \$150 million as a civil penalty to be distributed to former Bank of America shareholders as part of the SEC's Fair Fund program and a payment of \$1 million to be made to the NC AG for its consumer protection purposes. The payment to the NC AG is not a penalty or a fine. As part of the settlements, the Corporation also agreed to implement a number of additional undertakings for a period of three years, including: engaging an independent auditor to perform an assessment and provide an attestation report on the effectiveness of the Corporation's disclosure controls and procedures; furnishing management

certifications signed by the CEO and CFO with respect to proxy statements; retaining disclosure counsel to the Audit Committee of the Corporation's Board; adopting independence requirements beyond those already applicable for all members of the Compensation and Benefits Committee of the Board; continuing to retain an independent compensation consultant to the Compensation and Benefits Committee; implementing and disclosing written incentive compensation principles on the Corporation's website and providing the Corporation's shareholders with an advisory vote concerning any proposed changes to such principles; and providing the Corporation's shareholders with an annual "say on pay" advisory vote regarding the compensation of senior executives. These proposed undertakings may be amended or modified in light of any new regulation or requirement that comes into effect during the three-year period and is applicable to the Corporation with respect to the same subject matter. On February 22, 2010, the District Court approved the settlement subject to the Corporation and the SEC making certain modifications to the settlement to require agreement between the SEC and the Corporation on the selection of the independent auditor and disclosure counsel and to clarify certain issues regarding the distribution of the civil penalty. The parties made the modifications and on February 24, 2010, the District Court entered the Consent Judgment encompassing the settlement terms.

On February 4, 2010, the Office of the New York State Attorney General (NY AG) filed a civil complaint in the Supreme Court of New York State, entitled *People of the State of New York v. Bank of America, et al.* The complaint names as defendants the Corporation and the Corporation's former chief executive and chief financial officers, Kenneth D. Lewis, and Joseph L. Price, and alleges violations of Sections 352, 352-c(1)(a), 352-c(1)(c), and 353 of the New York General Business Law, commonly known as the Martin Act, and Section 63(12) of the New York Executive Law. The complaint is based on, among other things, alleged false statements and omissions and fraudulent practices related to: (i) the disclosure of Merrill Lynch's financial condition and its interim and projected losses during the fourth quarter of 2008; (ii) the Corporation's contacts with federal government officials regarding the Corporation's consideration of invoking the material adverse effect clause in the merger agreement and the possibility of obtaining additional government assistance; (iii) the disclosure of the payment and timing of year-end incentive compensation to Merrill Lynch employees; and (iv) public statements regarding the due diligence conducted in connection with the Acquisition and positive statements regarding the Acquisition. The complaint seeks an unspecified amount in disgorgement, penalties, restitution, and damages and other equitable relief.

### Merrill Lynch Subprime-related Matters

*Louisiana Sheriffs' Pension & Relief Fund v. Conway, et al.*

On October 3, 2008, a putative class action was filed against Merrill Lynch, Merrill Lynch Capital Trust I, Merrill Lynch Capital Trust II, Merrill Lynch Capital Trust III, MLPF&S (collectively the Merrill Lynch entities), and certain present and former Merrill Lynch officers and directors, and underwriters, including BAS, in New York Supreme Court, New York County. The complaint seeks relief on behalf of all persons who purchased or otherwise acquired debt securities issued by the Merrill Lynch entities pursuant to a shelf registration statement dated March 31, 2006. The complaint alleged that prospectuses misstated the financial condition of the Merrill Lynch entities and failed to disclose their exposure to losses from investments tied to subprime and other mortgages, as well as their liability arising from its participation in the ARS market. On October 22, 2008, the action was removed to the U.S. District Court for the Southern District of New York and on November 5, 2008 it was accepted as a

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related case to *In re Merrill Lynch & Co., Inc. Securities, Derivative, and ERISA Litigation*. On April 21, 2009, the parties reached an agreement in principle to settle the Louisiana Sheriff's matter in an amount that is not material to the Corporation's Consolidated Financial Statements and dismiss all claims with prejudice. On November 30, 2009, the U.S. District Court for the Southern District of New York granted final approval of the settlement.

**Connecticut Carpenters Pension Fund, et al. v. Merrill Lynch & Co., Inc., et al.; Iron Workers Local No. 25 Pension Fund v. Credit-Based Asset Servicing and Securitization LLC, et al.; Public Employees' Ret. System of Mississippi v. Merrill Lynch & Co. Inc. et al.; Wyoming State Treasurer v. Merrill Lynch & Co. Inc.**

Beginning in December 2008, Merrill Lynch affiliated entities, including Merrill Lynch Mortgage Investors, Inc., and officers and directors of Merrill Lynch Mortgage Investors, Inc., and others were named in four putative class actions arising out of the underwriting and sale of more than \$55 billion of MBS. The complaints alleged, among other things, that the relevant registration statements and accompanying prospectuses or prospectus supplements misrepresented or omitted material facts regarding the underwriting standards used to originate the mortgages in the mortgage pools underlying the MBS, the process by which the mortgage pools were acquired, and the appraisals of the homes secured by the mortgages. Plaintiffs seek to recover alleged losses in the market value of the MBS allegedly caused by the performance of the underlying mortgages or to rescind their purchases of the MBS. These cases were consolidated under the caption *Public Employees' Ret. System of Mississippi v. Merrill Lynch & Co. Inc.* and, on May 20, 2009, a consolidated amended complaint was filed. On June 17, 2009, all defendants filed a motion to dismiss the consolidated amended complaint.

### Federal Home Loan Bank of Seattle Litigation

On December 23, 2009, FHLB Seattle filed a complaint, entitled *Federal Home Loan Bank of Seattle v. Merrill Lynch, Pierce, Fenner & Smith, Inc., et al.*, in the Superior Court of Washington for King County against MLPF&S, Merrill Lynch Mortgage Investors, Inc., and Merrill Lynch Mortgage Capital, Inc. The complaint alleges violations of the Securities Act of Washington in connection with the offering of various MBS and asserts, among other things, misstatements and omissions concerning the credit quality of the mortgage loans underlying the MBS and the loan origination practices associated with those loans. The complaint seeks rescission, interest, costs and attorneys' fees.

Merrill Lynch & Co., Inc. is cooperating with the SEC and other governmental authorities investigating subprime mortgage-related activities.

### Montgomery

On January 19, 2010, a putative class action entitled *Montgomery v. Bank of America, et al.*, was filed in the U.S. District Court for the Southern District of New York against the Corporation, BAS, MLPF&S and a number of its current and former officers and directors on behalf of all persons who acquired certain preferred stock offered pursuant to a shelf registration statement dated May 5, 2006, specifically two offerings dated January 24, 2008 and another dated May 20, 2008. The *Montgomery* complaint asserts claims under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, and alleges that the prospectus supplements associated with the offerings: (i) failed to disclose that the Corporation's loans, leases, CDOs, and commercial MBS were impaired to a greater extent than disclosed; (ii) misrepresented the extent of the impaired assets by failing to establish adequate reserves or properly record losses for its impaired assets; and (iii) misrepresented the adequacy of the Corporation's internal controls, and the Corporation's capital base in light of the alleged impairment of its assets.

### Municipal Derivatives Matters

The Antitrust Division of the DOJ, the SEC, and the Internal Revenue Service (IRS) are investigating possible anticompetitive bidding practices in the municipal derivatives industry involving various parties, including

BANA, dating back to the early 1990s. The activities at issue in these industry-wide government investigations concern the bidding process for municipal derivatives that are offered to states, municipalities and other issuers of tax-exempt bonds. The Corporation has cooperated, and continues to cooperate, with the DOJ, the SEC and the IRS. On January 11, 2007, the Corporation entered into a Corporate Conditional Leniency Letter (the Letter) with DOJ. Under the Letter and subject to the Corporation's continuing cooperation, the DOJ will not bring any criminal antitrust prosecution against the Corporation in connection with the matters that the Corporation reported to DOJ. Subject to satisfying the DOJ and the court presiding over any civil litigation of the Corporation's cooperation, the Corporation is eligible for: (i) a limit on liability to single, rather than treble, damages in certain types of related civil antitrust actions; and (ii) relief from joint and several antitrust liability with other civil defendants.

On February 4, 2008, BANA received a Wells notice advising that the SEC staff is considering recommending that the SEC bring a civil injunctive action and/or an administrative proceeding against BANA "in connection with the bidding of various financial instruments associated with municipal securities." An SEC action or proceeding could seek a permanent injunction, disgorgement plus prejudgment interest, civil penalties and other remedial relief. Merrill Lynch is also being investigated by the SEC and the DOJ concerning bidding practices in the municipal derivatives industry.

Beginning in March 2008, the Corporation, BANA and other financial institutions, including Merrill Lynch, have been named as defendants in complaints filed in federal courts in the District of Columbia, New York and elsewhere. Plaintiffs in those cases purport to represent classes of government and private entities that purchased municipal derivatives from defendants. The complaints allege that defendants conspired to allocate customers and fix or stabilize the prices of certain municipal derivatives from 1992 through the present. The plaintiffs' complaints seek unspecified damages, including treble damages. These lawsuits were consolidated for pre-trial proceedings in the *In re Municipal Derivatives Antitrust Litigation*, pending in the U.S. District Court for the Southern District of New York. BANA, BAS, Merrill Lynch and other financial institutions have also been named in several related individual suits originally filed in California state courts on behalf of a number of cities and counties in California and asserting state law causes of action. All of these cases have been removed to the U.S. District Court for the Southern District of New York and are now part of *In re Municipal Derivatives Antitrust Litigation*. The amended complaints filed in these actions continue to allege a substantially similar conspiracy and now assert violations of the Sherman Act and California's Cartwright Act. Six individual actions have been filed in the U.S. District Courts for the Eastern and Central Districts of California. All of these cases allege a substantially similar conspiracy and violations of the Sherman and Cartwright Acts, and seek unspecified damages, and in some cases, treble damages. All six cases are in the process of being transferred for consolidation in the *In re Municipal Derivatives Antitrust Litigation*.

On September 3, 2009, BANA was sued by the West Virginia Attorney General on behalf of the State of West Virginia for the same conspiracy alleged in the *In re Municipal Derivatives Antitrust Litigation*. The suit was originally filed in the Circuit Court of Mason County, West Virginia. BANA removed the case to the U.S. District Court for the Southern District of West Virginia (Huntington Division). The State's motion to remand is fully briefed. Upon removal, BANA noticed the State's case as a tag-along action subject to transfer by the MDL Panel. The MDL Panel has issued a Conditional Transfer Order transferring the action to the U.S. District Court for the Southern District of New York. The State objected and filed a motion to vacate. That motion was denied on February 2, 2010.

Beginning in April 2008, the Corporation and BANA received subpoenas, interrogatories and/or civil investigative demands from a number of state attorneys general requesting documents and information regarding municipal derivatives transactions from 1992 through the present.

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The Corporation and BANA are cooperating with the state attorneys general.

### Ocala Litigation

On November 25, 2009, BANA was named as a defendant in two related lawsuits filed in the U.S. District Court for the Southern District of New York. In *BNP Paribas Mortgage Corporation v. Bank of America, N.A.* and *Deutsche Bank, AG v. Bank of America, N.A.*, plaintiffs assert breach of contract, negligence and indemnification claims in connection with BANA's roles as, among other things, collateral agent, custodian and indenture trustee of Ocala Funding, LLC (Ocala). Ocala was a mortgage warehousing facility that provided funding to Taylor, Bean & Whitaker Mortgage Corp. (TBW) by issuing commercial paper and term securities backed by mortgage loans originated by TBW. Plaintiffs claim that they purchased in excess of \$1.6 billion in securities issued by Ocala and that BANA allegedly failed, among other things, to protect the collateral backing plaintiffs' securities. Plaintiffs seek unspecified compensatory damages, among other relief. On February 4, 2010, BANA moved to dismiss the complaints.

### Parmalat Finanziaria S.p.A. Matters

On December 24, 2003, Parmalat Finanziaria S.p.A. (Parmalat) was admitted into insolvency proceedings in Italy, known as "extraordinary administration." The Corporation, through certain of its subsidiaries, including BANA, provided financial services and extended credit to Parmalat and its related entities. On June 21, 2004, Extraordinary Commissioner Dr. Enrico Bondi filed with the Italian Ministry of Production Activities a plan of reorganization for the restructuring of the companies of the Parmalat group that are included in the Italian extraordinary administration proceeding. In July 2004, the Italian Ministry of Production Activities approved the Extraordinary Commissioner's restructuring plan, as amended, for the Parmalat group companies that are included in the Italian extraordinary administration proceeding. This plan was approved by the voting creditors and the Court of Parma, Italy in October of 2005.

Litigation and investigations relating to Parmalat are pending in both Italy and the United States.

### Proceedings in Italy

On May 26, 2004, the Public Prosecutor's Office for the Court of Milan, Italy filed criminal charges against Luca Sala, Luis Moncada, and Antonio Luzi, three former employees of the Corporation, alleging the crime of market manipulation in connection with a press release issued by Parmalat. On December 18, 2008, the Court of Milan, Italy fully acquitted each of the former employees of all charges. On June 17, 2009, the Public Prosecutor's Office for the Court of Milan, Italy filed an appeal of the decision. The initial hearing date for the appeal is set for January 26, 2010. The Public Prosecutor's Office also filed a related charge in May 2004 against the Corporation asserting administrative liability based on an alleged failure to maintain an organizational model sufficient to prevent the alleged criminal activities of its former employees. The trial on this administrative charge is ongoing, with hearing dates scheduled in 2010.

On July 31, 2009, the Public Prosecutor's Office for the Court of Parma, Italy filed formal charges against 10 former employees and one current employee of the Corporation, alleging the commission of crimes of fraudulent bankruptcy, fraud, usury and embezzlement in connection with the insolvency of Parmalat. The first preliminary hearing was held on November 16, 2009, with further hearings in 2010.

### Proceedings in the United States

All cases listed herein have been transferred to the U.S. District Court for the Southern District of New York for coordinated pre-trial purposes under the caption *In re Securities Litigation Parmalat*.

Since December 2003, certain purchasers of Parmalat-related private placement offerings have filed complaints against the Corporation and

various related entities in the following actions: *Principal Global Investors, LLC, et al. v. Bank of America Corporation, et al.* in the U.S. District Court for the Southern District of Iowa; *Monumental Life Insurance Company, et al. v. Bank of America Corporation, et al.* in the U.S. District Court for the Northern District of Iowa; *Prudential Insurance Company of America and Hartford Life Insurance Company v. Bank of America Corporation, et al.* in the U.S. District Court for the Northern District of Illinois; *Allstate Life Insurance Company v. Bank of America Corporation, et al.* in the U.S. District Court for the Northern District of Illinois; *Hartford Life Insurance v. Bank of America Corporation, et al.* in the U.S. District Court for the Southern District of New York; and *John Hancock Life Insurance Company, et al. v. Bank of America Corporation et al.* in the U.S. District Court for the District of Massachusetts. The actions variously allege violations of federal and state securities laws and state common law, and seek rescission and unspecified damages based upon the Corporation's and related entities' alleged roles in certain private placement offerings issued by Parmalat-related companies. The plaintiffs seek rescission and unspecified damages resulting from alleged purchases of approximately \$305 million in private placement instruments.

On November 23, 2005, the Official Liquidators of Food Holdings Limited and Dairy Holdings Limited, two entities in liquidation proceedings in the Cayman Islands, filed a complaint, entitled *Food Holdings Ltd, et al. v. Bank of America Corp., et al.* (the Food Holdings Action), in the U.S. District Court for the Southern District of New York against the Corporation and several related entities. The complaint in the Food Holdings Action alleges that the Corporation and other defendants conspired with Parmalat in carrying out transactions involving the plaintiffs in connection with the funding of Parmalat's Brazilian entities, and asserts claims for fraud, negligent misrepresentation, breach of fiduciary duty and other related claims. The complaint seeks in excess of \$400 million in compensatory damages and interest, among other relief. A bench trial was held the week of September 14, 2009. On February 17, 2010, the District Court issued an Opinion and Order dismissing all of the claims.

### Pender Litigation

The Corporation is a defendant in a putative class action entitled *William L. Pender, et al. v. Bank of America Corporation, et al.* (formerly captioned *Anita Pothier, et al. v. Bank of America Corporation, et al.*), which is pending in the U.S. District Court for the Western District of North Carolina. The action, filed on June 30, 2004, is brought on behalf of participants in or beneficiaries of The Bank of America Pension Plan (formerly known as the NationsBank Cash Balance Plan) and The Bank of America 401(k) Plan (formerly known as the NationsBank 401(k) Plan). The Corporation, BANA, The Bank of America Pension Plan, The Bank of America 401(k) Plan, the Bank of America Corporation Corporate Benefits Committee and various members thereof, and PricewaterhouseCoopers LLP are defendants. The complaint alleges violations of ERISA, including that the design of The Bank of America Pension Plan violated ERISA's defined benefit pension plan standards and that such plan's definition of normal retirement age is invalid. In addition, the complaint alleges age discrimination by The Bank of America Pension Plan, unlawful lump sum benefit calculation, violation of ERISA's "anti-backloading" rule, that certain voluntary transfers of assets by participants in The Bank of America 401(k) Plan to The Bank of America Pension Plan violated ERISA, and other related claims. The complaint alleges that plan participants are entitled to greater benefits and seeks declaratory relief, monetary relief in an unspecified amount, equitable relief, including an order reforming The Bank of America Pension Plan, attorneys' fees and interest. On September 26, 2005, the bank defendants filed a motion to dismiss. On December 1, 2005, the plaintiffs moved to certify classes consisting of, among others, (i) all persons who accrued or who are currently accruing benefits under The Bank of America Pension Plan and (ii) all persons who elected to have amounts representing their account balances under The Bank of America 401(k) Plan transferred to The Bank of America Pension Plan.

## NOTE 15 – Shareholders’ Equity and Earnings Per Common Share

### Common Stock

In January 2009, the Corporation issued 1.4 billion shares of common stock in connection with its acquisition of Merrill Lynch. For additional information regarding the Merrill Lynch acquisition, see *Note 2 – Merger and Restructuring Activity*. During 2009 and 2008, in connection with preferred stock issuances to the U.S. government under TARP, the Corporation issued warrants to purchase 121.8 million shares of common stock at an exercise price of \$30.79 per share and 150.4 million shares of common stock at an exercise price of \$13.30 per share. The U.S. Treasury recently announced its intention to auction, during March 2010, these warrants.

During the second quarter of 2009, the Corporation issued 1.25 billion shares of its common stock at an average price of \$10.77 per share through an at-the-market issuance program resulting in gross proceeds of approximately \$13.5 billion.

The Corporation may repurchase shares, subject to certain restrictions, from time to time, in the open market or in private transactions through the Corporation’s approved repurchase program. In 2009, the Corporation did not repurchase any shares of common stock and issued approximately 7.4 million shares under employee stock plans. At December 31, 2009, the Corporation had reserved 1.3 billion of unissued common shares for future issuances.

In October 2009, the Board declared a fourth quarter cash dividend of \$0.01 per common share which was paid on December 24, 2009 to

common shareholders of record on December 4, 2009. In July 2009, the Board declared a third quarter cash dividend of \$0.01 per common share which was paid on September 25, 2009 to common shareholders of record on September 4, 2009. In April 2009, the Board declared a second quarter cash dividend of \$0.01 per common share which was paid on June 26, 2009 to shareholders of record on June 5, 2009. In January 2009, the Board declared a first quarter cash dividend of \$0.01 per common share which was paid on March 27, 2009 to shareholders of record on March 6, 2009.

In addition, in January 2010, the Board declared a regular quarterly cash dividend on common stock of \$0.01 per share, payable on March 26, 2010 to common shareholders of record on March 5, 2010.

### Preferred Stock

During 2009, the Corporation entered into agreements with certain holders of non-government perpetual preferred stock to exchange their holdings of approximately \$7.3 billion aggregate liquidation preference of perpetual preferred stock for approximately 545 million shares of common stock. In addition, the Corporation exchanged approximately \$3.9 billion aggregate liquidation preference of non-government preferred stock for approximately 200 million shares of common stock in an exchange offer. In total, these exchanges resulted in the exchange of approximately \$11.3 billion aggregate liquidation preference of preferred stock into approximately 745 million shares of common stock. The table below provides further detail on the non-convertible perpetual preferred stock exchanges.

Series	Preferred Shares Exchanged	Carrying Value <sup>(1)</sup>	Common Shares Issued	Fair Value of Stock Issued
<b>Negotiated Exchanges</b>				
Series K	173,298	\$ 4,332	328,193,964	\$ 3,635
Series M	102,643	2,566	192,970,068	2,178
Series 4	7,024	211	11,642,232	131
Series D	6,566	164	10,104,798	114
Series 7	33,404	33	2,069,047	23
<b>Total Negotiated Exchanges</b>	<b>322,935</b>	<b>7,306</b>	<b>544,980,109</b>	<b>6,081</b>
<b>Exchange Offer</b>				
Series E	61,509	1,538	78,670,451	1,003
Series 5	29,810	894	45,753,525	583
Series 1	16,139	484	22,866,796	292
Series 2	19,453	584	27,562,975	351
Series 3	4,664	140	7,490,194	95
Series I	7,416	185	10,215,305	130
Series J	2,289	57	3,378,098	43
Series H	2,517	63	4,062,655	52
<b>Total Exchange Offer</b>	<b>143,797</b>	<b>3,945</b>	<b>199,999,999</b>	<b>2,549</b>
<b>Total Preferred Exchanges</b>	<b>466,732</b>	<b>\$ 11,251</b>	<b>744,980,108</b>	<b>\$ 8,630</b>

<sup>(1)</sup>Amounts shown are before third party issuance costs.

During 2009, in addition to the exchanges detailed in the table above, the Corporation exchanged 3.6 million shares, or \$3.6 billion aggregate liquidation preference of Series L 7.25% Non-Cumulative Perpetual Convertible Preferred Stock into 255 million shares of common stock valued at \$2.8 billion, which was accounted for as an induced conversion of preferred stock.

As a result of the exchange, the Corporation recorded an increase to retained earnings and net income applicable to common shareholders of approximately \$580 million. This represents the net of a \$2.62 billion benefit due to the excess of the carrying value of the Corporation’s non-convertible preferred stock over the fair value of the common stock

exchanged. This was partially offset by a \$2.04 billion inducement representing the excess of the fair value of the common stock exchanged over the fair value of the common stock that would have been issued under the original conversion terms.

In connection with the Merrill Lynch acquisition, Merrill Lynch non-convertible preferred shareholders received Bank of America Corporation preferred stock having substantially identical terms. Merrill Lynch convertible preferred stock remains outstanding and is now convertible into Bank of America common stock at an exchange ratio equivalent to the exchange ratio for Merrill Lynch common stock in connection with the acquisition.

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The following table presents a summary of preferred stock previously issued by the Corporation and remaining outstanding (including the series of preferred stock issued and remaining outstanding in connection with the acquisition of Merrill Lynch), after consideration of the exchanges discussed on the previous page.

### Preferred Stock Summary

(Dollars in millions, except as noted)		Initial Issuance Date	Total Shares Outstanding	Liquidation Preference per Share (in dollars)	Carrying Value <sup>(1)</sup>	Per Annum Dividend Rate	Redemption Period
Series	Description						
Series B <sup>(2)</sup>	7% Cumulative Redeemable	June 1997	7,571	\$ 100	\$ 1	7.00%	n/a
Series D <sup>(3, 9)</sup>	6.204% Non-Cumulative	September 2006	26,434	25,000	661	6.204%	On or after September 14, 2011
Series E <sup>(3, 9)</sup>	Floating Rate Non-Cumulative	November 2006	19,491	25,000	487	Annual rate equal to the greater of (a) 3-mo. LIBOR + 35 bps and (b) 4.00%	On or after November 15, 2011
Series H <sup>(3, 9)</sup>	8.20% Non-Cumulative	May 2008	114,483	25,000	2,862	8.20%	On or after May 1, 2013
Series I <sup>(3, 9)</sup>	6.625% Non-Cumulative	September 2007	14,584	25,000	365	6.625%	On or after October 1, 2017
Series J <sup>(3, 9)</sup>	7.25% Non-Cumulative	November 2007	39,111	25,000	978	7.25%	On or after November 1, 2012
Series K <sup>(3, 10)</sup>	Fixed-to-Floating Rate Non-Cumulative	January 2008	66,702	25,000	1,668	8.00% through 1/29/18; 3-mo. LIBOR + 363 bps thereafter	On or after January 30, 2018
Series L	7.25% Non-Cumulative Perpetual Convertible	January 2008	3,349,321	1,000	3,349	7.25%	n/a
Series M <sup>(3, 10)</sup>	Fixed-to-Floating Rate Non-Cumulative	April 2008	57,357	25,000	1,434	8.125% through 5/14/18; 3-mo. LIBOR + 364 bps thereafter	On or after May 15, 2018
Series S	Common Equivalent Stock	December 2009	1,286,000	15,000	19,290	Same as dividend per common share	n/a
Series 1 <sup>(3, 4)</sup>	Floating Rate Non-Cumulative	November 2004	4,861	30,000	146	3-mo LIBOR + 75 bps <sup>(5)</sup>	On or after November 28, 2009
Series 2 <sup>(3, 4)</sup>	Floating Rate Non-Cumulative	March 2005	17,547	30,000	526	3-mo LIBOR + 65 bps <sup>(5)</sup>	On or after November 28, 2009
Series 3 <sup>(3, 4)</sup>	6.375% Non-Cumulative	November 2005	22,336	30,000	670	6.375%	On or after November 28, 2010
Series 4 <sup>(3, 4)</sup>	Floating Rate Non-Cumulative	November 2005	12,976	30,000	389	3-mo LIBOR + 75 bps <sup>(6)</sup>	On or after November 28, 2010
Series 5 <sup>(3, 4)</sup>	Floating Rate Non-Cumulative	March 2007	20,190	30,000	606	3-mo LIBOR + 50 bps <sup>(6)</sup>	On or after May 21, 2012
Series 6 <sup>(3, 7)</sup>	6.70% Non-Cumulative Perpetual	September 2007	65,000	1,000	65	6.70%	On or after February 03, 2009
Series 7 <sup>(3, 7)</sup>	6.25% Non-Cumulative Perpetual	September 2007	16,596	1,000	17	6.25%	On or after March 18, 2010
Series 8 <sup>(3, 4)</sup>	8.625% Non-Cumulative	April 2008	89,100	30,000	2,673	8.625%	On or after May 28, 2013
Series 2 (MC) <sup>(3, 8)</sup>	9.00% Non-Voting Mandatory Convertible Non-Cumulative	July 2008	12,000	100,000	1,200	9.00%	On October 15, 2010
Series 3 (MC) <sup>(3, 8)</sup>	9.00% Non-Voting Mandatory Convertible Non-Cumulative	July 2008	5,000	100,000	500	9.00%	On October 15, 2010
<b>Total</b>			<b>5,246,660</b>		<b>\$ 37,887</b>		

<sup>(1)</sup>Amounts shown are before third party issuance costs and other Merrill Lynch purchase accounting related adjustments of \$679 million.

<sup>(2)</sup>Series B Preferred Stock does not have early redemption/call rights.

<sup>(3)</sup>The Corporation may redeem series of preferred stock on or after the redemption date, in whole or in part, at its option, at the liquidation preference plus declared and unpaid dividends.

<sup>(4)</sup>Ownership is held in the form of depositary shares, each representing a 1/1200<sup>th</sup> interest in a share of preferred stock, paying a quarterly cash dividend, if and when declared.

<sup>(5)</sup>Subject to 3.00% minimum rate per annum.

<sup>(6)</sup>Subject to 4.00% minimum rate per annum.

<sup>(7)</sup>Ownership is held in the form of depositary shares, each representing a 1/40<sup>th</sup> interest in a share of preferred stock, paying a quarterly cash dividend, if and when declared.

<sup>(8)</sup>Represents shares outstanding of Merrill Lynch & Co., Inc. Each share of Mandatory Convertible Preferred Stock Series 2 and Series 3 will be converted on October 15, 2010 into a maximum of 2,605 and 3,820 shares of the Corporation's common stock plus cash in lieu of fractional shares and are optionally convertible prior to that time into 2,227 and 3,265 shares.

<sup>(9)</sup>Ownership is held in the form of depositary shares each representing a 1/1000<sup>th</sup> interest in a share of preferred stock paying a quarterly cash dividend, if and when declared.

<sup>(10)</sup>Ownership is held in the form of depositary shares each representing a 1/25<sup>th</sup> interest in a share of preferred stock, paying a semi-annual cash dividend, if and when declared, until the redemption date adjusts to a quarterly cash dividend, if and when declared, thereafter.

n/a = not applicable



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Series L Preferred Stock does not have early redemption/call rights. Each share of the Series L Preferred Stock may be converted at any time, at the option of the holder, into 20 shares of the Corporation's common stock plus cash in lieu of fractional shares. On or after January 30, 2013, the Corporation may cause some or all of the Series L Preferred Stock, at its option, at any time or from time to time, to be converted into shares of common stock at the then-applicable conversion rate if, for 20 trading days during any period of 30 consecutive trading days, the closing price of common stock exceeds 130 percent of the then-applicable conversion price of the Series L Preferred Stock. If the Corporation exercises its rights to cause the automatic conversion of Series L Preferred Stock on January 30, 2013, it will still pay any accrued dividends payable on January 30, 2013 to the applicable holders of record.

Common Equivalent Junior Preferred Stock Series S (Common Equivalent Stock) does not have early redemption/call rights. Each share of the Common Equivalent Stock is automatically convertible into 1,000 shares of the Corporation's common stock following effectiveness of an amendment to the Corporation's certificate of incorporation to increase the amount of authorized common stock. Ownership of the Common Equivalent Stock is held in the form of depositary shares each representing a 1/1000<sup>th</sup> interest in a share of preferred stock, paying cash dividends, on an as converted basis, with the Corporation's common stock, if and when declared. In certain circumstances following the failure of the Corporation's stockholders to approve the amendment to the certificate of incorporation, the Common Equivalent Stock will partially convert into common stock, the liquidation preference per share will be proportionally reduced, and the shares will be entitled to additional quarterly cash dividends, if and when declared.

All series of preferred stock in the previous table have a par value of \$0.01 per share. The shares of the series of preferred stock above are not subject to the operation of a sinking fund, and other than the right of the Series S Preferred Stock to participate in certain common dividends and liquidating distributions, have no participation rights. With the exception of the Series L Preferred Stock, Common Equivalent Stock, and Mandatory Convertible Preferred Stock Series 2 and 3, the shares of the series of preferred stock in the previous table are not convertible. The holders of the Series B Preferred Stock, Common Equivalent Stock and Series 1-8 Preferred Stock have general voting rights, and the holders of the other series included in the previous table have no general voting rights. All preferred stock of the Corporation outstanding has preference over the Corporation's common stock with respect to the payment of dividends and distribution of the Corporation's assets in the event of a liquidation or dissolution except the Series S, which ranks equally with the common stock in certain circumstances. If any dividend payable on these series is in arrears for three or more semi-annual or six or more quarterly dividend periods, as applicable (whether consecutive or not), the holders of these series and any other class or series of preferred stock ranking equally as to payment of dividends and upon which equivalent voting

rights have been conferred and are exercisable (voting as a single class) will be entitled to vote for the election of two additional directors. These voting rights terminate when the Corporation has paid in full dividends on these series for at least two semi-annual or four quarterly dividend periods, as applicable, following the dividend arrearage.

In October 2008, in connection with TARP, the Corporation issued to the U.S. Treasury non-voting perpetual preferred stock and warrants for \$15.0 billion. In addition, in January 2009, in connection with TARP and the Merrill Lynch acquisition, the Corporation issued additional preferred stock for \$30.0 billion. On December 2, 2009, the Corporation received approval from the U.S. Treasury and Federal Reserve to repay the U.S. government's \$45.0 billion preferred stock investment provided under TARP. In accordance with the authorization, on December 9, 2009, the Corporation repurchased all outstanding shares of Fixed-Rate Cumulative Perpetual Preferred Stock Series N, Series Q and Series R preferred stock (collectively, TARP Preferred Stock) previously issued to the U.S. Treasury. The U.S. Treasury recently announced its intention to auction, during March 2010, the common stock warrants the Corporation issued in connection with the sale of the TARP Preferred Stock.

The Corporation repurchased the TARP Preferred Stock through use of \$25.7 billion in excess liquidity and \$19.2 billion in proceeds from the sale of 1.3 billion Common Equivalent Securities (CES) valued at \$15.00 per unit. The Common Equivalent Securities consist of depositary shares representing interests in shares of Common Equivalent Stock, and warrants (Contingent Warrants) to purchase an aggregate of 60 million shares of the Corporation's common stock. Each CES consisted of one depositary share representing a 1/1000<sup>th</sup> interest in a share of Common Equivalent Stock and each Contingent Warrant granted the holder the right to purchase 0.0467 of a share of a common stock for \$0.01 per share. Each depositary share entitled the holder, through the depositary to a proportional fractional interest in all rights and preferences of the Common Equivalent Stock, including conversion, dividend, liquidation and voting rights.

The Corporation held a special meeting of stockholders on February 23, 2010 at which it obtained stockholder approval of an amendment to the amended and restated certificate of incorporation to increase the number of authorized shares of common stock, and accordingly the Common Equivalent Stock automatically converted in full into 1.286 billion shares of common stock on February 24, 2010 following the filing of the amendment with the Delaware Secretary of State on February 23, 2010. In addition, as a result, the Contingent Warrants expired without having become exercisable and the CES ceased to exist.

During 2009, 2008 and 2007, the aggregate dividends declared on preferred stock were \$4.5 billion, \$1.3 billion and \$182 million, respectively. This included \$536 million in 2009 related to preferred stock issued or remaining outstanding as a part of the Merrill Lynch acquisition.

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### Accumulated OCI

The following table presents the changes in accumulated OCI for 2009, 2008 and 2007, net-of-tax.

	Available-for-Sale Debt Securities	Available-for-Sale Marketable Equity Securities	Derivatives	Employee Benefit Plans <sup>(1)</sup>	Foreign Currency <sup>(2)</sup>	Total
(Dollars in millions)						
<b>Balance, December 31, 2008</b>	<b>\$ (5,956)</b>	<b>\$ 3,935</b>	<b>\$ (3,458)</b>	<b>\$ (4,642)</b>	<b>\$ (704)</b>	<b>\$(10,825)</b>
Cumulative adjustment for accounting change – OTTI <sup>(3)</sup>	(71)	–	–	–	–	(71)
Net change in fair value recorded in accumulated OCI	6,364	2,651	197	318	211	9,741
Net realized (gains) losses reclassified into earnings	(965)	(4,457)	726	232	–	(4,464)
<b>Balance, December 31, 2009</b>	<b>\$ (628)</b>	<b>\$ 2,129</b>	<b>\$ (2,535)</b>	<b>\$ (4,092)</b>	<b>\$ (493)</b>	<b>\$(5,619)</b>
<b>Balance, December 31, 2007</b>	<b>\$ (1,880)</b>	<b>\$ 8,416</b>	<b>\$ (4,402)</b>	<b>\$ (1,301)</b>	<b>\$ 296</b>	<b>\$ 1,129</b>
Net change in fair value recorded in accumulated OCI <sup>(4)</sup>	(5,496)	(4,858)	104	(3,387)	(1,000)	(14,637)
Net realized losses reclassified into earnings	1,420	377	840	46	–	2,683
<b>Balance, December 31, 2008</b>	<b>\$ (5,956)</b>	<b>\$ 3,935</b>	<b>\$ (3,458)</b>	<b>\$ (4,642)</b>	<b>\$ (704)</b>	<b>\$(10,825)</b>
<b>Balance, December 31, 2006</b>	<b>\$ (3,117)</b>	<b>\$ 384</b>	<b>\$ (3,697)</b>	<b>\$ (1,428)</b>	<b>\$ 147</b>	<b>\$(7,711)</b>
Net change in fair value recorded in accumulated OCI	1,100	8,316	(1,252)	4	142	8,310
Net realized losses reclassified into earnings	137	(284)	547	123	7	530
<b>Balance, December 31, 2007</b>	<b>\$ (1,880)</b>	<b>\$ 8,416</b>	<b>\$ (4,402)</b>	<b>\$ (1,301)</b>	<b>\$ 296</b>	<b>\$ 1,129</b>

<sup>(1)</sup>Net change in fair value represents after-tax adjustments based on the final year-end actuarial valuations.

<sup>(2)</sup>Net change in fair value represents only the impact of changes in foreign exchange rates on the Corporation's net investment in foreign operations.

<sup>(3)</sup>Effective January 1, 2009, the Corporation adopted new accounting guidance on the recognition of other-than-temporary impairment losses on debt securities. For additional information on the adoption of this accounting guidance, see *Note 1 – Summary of Significant Accounting Principles* and *Note 5 – Securities*.

<sup>(4)</sup>For more information on employee benefit plans, see *Note 17 – Employee Benefit Plans*.

### Earnings Per Common Share

On January 1, 2009, the Corporation adopted new accounting guidance on EPS which defines unvested share-based payment awards that contain nonforfeitable rights to dividends as participating securities that are included in computing EPS using the two-class method. Prior period EPS amounts have been reclassified to conform to current period presentation. See *Note 1 – Summary of Significant Accounting Principles* for additional information.

For 2009, 2008 and 2007, average options to purchase 315 million, 181 million and 28 million shares, respectively, of common stock were outstanding but not included in the computation of earnings per common share because they were antidilutive under the treasury stock method. For 2009, 147 million average dilutive potential common shares associated with the convertible Series L Preferred Stock and Mandatory Convertible Preferred Stock Series 2 and Series 3 were excluded from the diluted

share count because the result would have been antidilutive under the "if-converted" method. For 2009, 81 million average potential dilutive common shares associated with the Common Equivalent Securities were also excluded from the diluted share count because the result would have been antidilutive under the "if-converted" method. For 2009, average warrants to purchase 265 million shares of common stock were outstanding but not included in the computation of earnings per common share because they were antidilutive under the treasury stock method. For 2008, 128 million average dilutive potential common shares associated with the convertible Series L Preferred Stock issued in January 2008 were excluded from the diluted share count because the result would have been antidilutive under the "if-converted" method.

The calculation of earnings per common share and diluted earnings per common share for 2009, 2008 and 2007 is presented below.

(Dollars in millions, except per share information; shares in thousands)	2009	2008	2007
<b>Earnings (loss) per common share</b>			
Net income	\$ 6,276	\$ 4,008	\$ 14,982
Preferred stock dividends	(4,494)	(1,452)	(182)
Accelerated accretion from redemption of preferred stock issued to the U.S. Treasury	(3,986)	–	–
Net income (loss) applicable to common shareholders	\$ (2,204)	\$ 2,556	\$ 14,800
Income (loss) allocated to participating securities	(6)	(69)	(108)
Net income (loss) allocated to common shareholders	\$ (2,210)	\$ 2,487	\$ 14,692
Average common shares issued and outstanding	7,728,570	4,592,085	4,423,579
<b>Earnings (loss) per common share</b>	<b>\$ (0.29)</b>	<b>\$ 0.54</b>	<b>\$ 3.32</b>
<b>Diluted earnings (loss) per common share</b>			
Net income (loss) applicable to common shareholders <sup>(1)</sup>	\$ (2,204)	\$ 2,556	\$ 14,800
Income (loss) allocated to participating securities	(6)	(69)	(108)
Net income (loss) allocated to common shareholders	\$ (2,210)	\$ 2,487	\$ 14,692
Average common shares issued and outstanding	7,728,570	4,592,085	4,423,579
Dilutive potential common shares <sup>(2)</sup>	–	4,343	39,634
Total diluted average common shares issued and outstanding	7,728,570	4,596,428	4,463,213
<b>Diluted earnings (loss) per common share</b>	<b>\$ (0.29)</b>	<b>\$ 0.54</b>	<b>\$ 3.29</b>

<sup>(1)</sup>For 2009, the Corporation recorded an increase to retained earnings and net income applicable to common shareholders of approximately \$580 million related to the Corporation's preferred stock exchange for common stock.

<sup>(2)</sup>Includes incremental shares from restricted stock units, restricted stock shares, stock options and warrants. Due to a net loss applicable to common shareholders for 2009, no dilutive potential common shares were included in the calculations of diluted EPS because they were antidilutive.

## **NOTE 16 – Regulatory Requirements and Restrictions**

The Federal Reserve requires the Corporation's banking subsidiaries to maintain reserve balances based on a percentage of certain deposits. Average daily reserve balances required by the Federal Reserve were \$10.9 billion and \$7.1 billion for 2009 and 2008. Currency and coin residing in branches and cash vaults (vault cash) are used to partially satisfy the reserve requirement. The average daily reserve balances, in excess of vault cash, held with the Federal Reserve amounted to \$3.4 billion and \$133 million for 2009 and 2008.

The primary sources of funds for cash distributions by the Corporation to its shareholders are dividends received from its banking subsidiaries, Bank of America, N.A. and FIA Card Services, N.A. In 2009, the Corporation received \$3.4 billion in dividends from Bank of America, N.A. In 2010, Bank of America, N.A. and FIA Card Services, N.A. can declare and pay dividends to the Corporation of \$1.4 billion and \$0 plus an additional amount equal to their net profits for 2010, as defined by statute, up to the date of any such dividend declaration. The other subsidiary national banks can initiate aggregate dividend payments in 2010 of \$373 million plus an additional amount equal to their net profits for 2010, as defined by statute, up to the date of any such dividend declaration. The amount of dividends that each subsidiary bank may declare in a calendar year without approval by the Office of the Comptroller of the Currency (OCC) is the subsidiary bank's net profits for that year combined with its net retained profits, as defined, for the preceding two years.

The Federal Reserve, OCC, Federal Deposit Insurance Corporation (FDIC) and Office of Thrift Supervision (collectively, joint agencies) have in place regulatory capital guidelines for U.S. banking organizations. Failure to meet the capital requirements can initiate certain mandatory and discretionary actions by regulators that could have a material effect on the Corporation's financial position. The regulatory capital guidelines measure capital in relation to the credit and market risks of both on- and off-balance sheet items using various risk weights. Under the regulatory capital guidelines, Total capital consists of three tiers of capital. Tier 1 capital includes common shareholders' equity, Trust Securities, noncontrolling interests and qualifying preferred stock, less goodwill and other adjustments. Tier 2 capital consists of preferred stock not qualifying as Tier 1 capital, mandatorily convertible debt, limited amounts of subordinated debt, other qualifying term debt, the allowance for credit losses up to 1.25 percent of risk-weighted assets and other adjustments. Tier 3 capital includes subordinated debt that is unsecured, fully paid, has an original maturity of at least two years, is not redeemable before maturity without prior approval by the Federal Reserve and includes a lock-in clause precluding payment of either interest or principal if the payment would cause the issuing bank's risk-based capital ratio to fall or remain

below the required minimum. Tier 3 capital can only be used to satisfy the Corporation's market risk capital requirement and may not be used to support its credit risk requirement. At December 31, 2009 and 2008, the Corporation had no subordinated debt that qualified as Tier 3 capital.

Certain corporate-sponsored trust companies which issue Trust Securities are not consolidated. In accordance with Federal Reserve guidance, the Federal Reserve allows Trust Securities to qualify as Tier 1 capital with revised quantitative limits that will be effective on March 31, 2011. As a result, the Corporation includes Trust Securities in Tier 1 capital. Current limits restrict core capital elements to 15 percent of total core capital elements for internationally active bank holding companies. In addition, the Federal Reserve revised the qualitative standards for capital instruments included in regulatory capital. Internationally active bank holding companies are those that have significant activities in non-U.S. markets with consolidated assets greater than \$250 billion or on-balance sheet foreign exposure greater than \$10 billion. At December 31, 2009, the Corporation's restricted core capital elements comprised 11.8 percent of total core capital elements. The Corporation expects to remain fully compliant with the revised limits prior to the implementation date of March 31, 2011.

To meet minimum, adequately-capitalized regulatory requirements, an institution must maintain a Tier 1 capital ratio of four percent and a Total capital ratio of eight percent. A "well-capitalized" institution must generally maintain capital ratios 200 bps higher than the minimum guidelines. The risk-based capital rules have been further supplemented by a Tier 1 leverage ratio, defined as Tier 1 capital divided by adjusted quarterly average total assets, after certain adjustments. "Well-capitalized" bank holding companies must have a minimum Tier 1 leverage ratio of four percent. National banks must maintain a Tier 1 leverage ratio of at least five percent to be classified as "well-capitalized."

Net unrealized gains (losses) on AFS debt securities, net unrealized gains on AFS marketable equity securities, net unrealized gains (losses) on derivatives, and employee benefit plan adjustments in shareholders' equity are excluded from the calculations of Tier 1 common capital, Tier 1 capital and leverage ratios. The Total capital ratio excludes all of the above with the exception of up to 45 percent of net unrealized pre-tax gains on AFS marketable equity securities.

The Corporation calculates Tier 1 common capital as Tier 1 capital including CES less qualifying trust preferred securities, hybrid securities and qualifying noncontrolling interest in subsidiaries. CES is included in Tier 1 common capital based upon applicable regulatory guidance and the expectation that the underlying Common Equivalent Stock would convert into common stock following shareholder approval of additional authorized shares. Tier 1 common capital was \$120.4 billion and \$63.3 billion and the Tier 1 common capital ratio was 7.81 percent and 4.80 percent at December 31, 2009 and 2008.

**Regulatory Capital**

	December 31					
	2009			2008		
	Actual Ratio	Actual Amount	Minimum Required <sup>(1)</sup>	Actual Ratio	Actual Amount	Minimum Required <sup>(1)</sup>
(Dollars in millions)						
<b>Risk-based capital</b>						
<b>Tier 1 common</b>						
<i>Bank of America Corporation</i>	7.81%	\$120,394	n/a	4.80%	\$ 63,339	n/a
<b>Tier 1</b>						
<i>Bank of America Corporation</i>	10.40	160,388	\$ 61,676	9.15	120,814	\$ 52,833
Bank of America, N.A.	10.30	111,916	43,472	8.51	88,979	41,818
FIA Card Services, N.A.	15.21	28,831	7,584	13.90	19,573	5,632
<b>Total</b>						
<i>Bank of America Corporation</i>	14.66	226,070	123,401	13.00	171,661	105,666
Bank of America, N.A.	13.76	149,528	86,944	11.71	122,392	83,635
FIA Card Services, N.A.	17.01	32,244	15,168	16.25	22,875	11,264
<b>Tier 1 leverage</b>						
<i>Bank of America Corporation</i>	6.91	160,388	92,882	6.44	120,814	56,155
Bank of America, N.A.	7.38	111,916	60,626	5.94	88,979	44,944
FIA Card Services, N.A.	23.09	28,831	4,994	14.28	19,573	4,113

<sup>(1)</sup> Dollar amount required to meet guidelines for adequately capitalized institutions.

n/a = not applicable

**Regulatory Capital Developments**

In June 2004, the Basel II Accord was published with the intent of more closely aligning regulatory capital requirements with underlying risks, similar to economic capital. While economic capital is measured to cover unexpected losses, the Corporation also manages regulatory capital to adhere to regulatory standards of capital adequacy. The Basel II Final Rule (Basel II Rules), which was published on December 7, 2007, established requirements for the U.S. implementation and provided detailed capital requirements for credit and operational risk under Pillar 1, supervisory requirements under Pillar 2 and disclosure requirements under Pillar 3. The Corporation will begin Basel II parallel implementation during the second quarter of 2010.

In July 2009, the Basel Committee on Banking Supervision released a consultative document entitled "Revisions to the Basel II Market Risk Framework" that would significantly increase the capital requirements for trading book activities if adopted as proposed. The proposal recommended implementation by December 31, 2010, but regulatory agencies have not yet issued a notice of proposed rulemaking, which is required before establishing final rules. As a result, the Corporation cannot determine the implementation date or the final capital impact.

In December 2009, the Basel Committee on Banking Supervision issued a consultative document entitled "Strengthening the Resilience of the Banking Sector." If adopted as proposed, this could increase significantly the aggregate equity that bank holding companies are required to hold by disqualifying certain instruments that previously have qualified as Tier 1 capital. In addition, it would increase the level of risk-weighted assets. The proposal could also increase the capital charges imposed on certain assets potentially making certain businesses more expensive to conduct. Regulatory agencies have not opined on the proposal for implementation. The Corporation continues to assess the potential impact of the proposal.

As part of the Capital Assistance Program (CAP), the Corporation, as well as several other large financial institutions, are subject to the SCAP conducted by the federal regulators. The objective of the SCAP is to assess losses that could occur under certain economic scenarios, including economic conditions more severe than the Corporation currently anticipates. As a result of the SCAP, in May 2009 federal regulators determined that the Corporation required an additional \$33.9 billion of Tier 1 common capital to sustain the most severe economic circum - -

stances assuming a more prolonged and deeper recession over a two-year period than both private and government economists currently project. The Corporation achieved the increased capital requirement during 2009 through strategic transactions that increased common capital by approximately \$39.7 billion which significantly exceeded the SCAP buffer. This included a gain from the sale of shares in CCB, direct sale of common stock, reduced dividends on preferred shares associated with shares exchanged for common stock and related deferred tax disallowances.

**NOTE 17 – Employee Benefit Plans**

**Pension and Postretirement Plans**

The Corporation sponsors noncontributory trustee pension plans that cover substantially all officers and employees, a number of noncontributory nonqualified pension plans, and postretirement health and life plans. The plans provide defined benefits based on an employee's compensation and years of service. The Bank of America Pension Plan (the Pension Plan) provides participants with compensation credits, generally based on years of service. For account balances based on compensation credits prior to January 1, 2008, the Pension Plan allows participants to select from various earnings measures, which are based on the returns of certain funds or common stock of the Corporation. The participant-selected earnings measures determine the earnings rate on the individual participant account balances in the Pension Plan. Participants may elect to modify earnings measure allocations on a periodic basis subject to the provisions of the Pension Plan. For account balances based on compensation credits subsequent to December 31, 2007, the account balance earnings rate is based on a benchmark rate. For eligible employees in the Pension Plan on or after January 1, 2008, the benefits become vested upon completion of three years of service. It is the policy of the Corporation to fund not less than the minimum funding amount required by ERISA.

The Pension Plan has a balance guarantee feature for account balances with participant-selected earnings, applied at the time a benefit payment is made from the plan that effectively provides principal protection for participant balances transferred and certain compensation credits. The Corporation is responsible for funding any shortfall on the guarantee feature.

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In May 2008, the Corporation and the IRS entered into a closing agreement resolving all matters relating to an audit by the IRS of the Pension Plan and the Bank of America 401(k) Plan. The audit included a review of voluntary transfers by participants of 401(k) Plan accounts to the Pension Plan. In connection with the agreement, the Pension Plan transferred approximately \$1.2 billion of assets and liabilities associated with the transferred accounts to a newly established defined contribution plan during 2009.

As a result of recent acquisitions, the Corporation assumed the obligations related to the pension plans of FleetBoston, MBNA, U.S. Trust Corporation, LaSalle and Countrywide. These plans, together with the Pension Plan, are referred to as the Qualified Pension Plans. The Bank of America Pension Plan for Legacy Fleet (the FleetBoston Pension Plan) and the Bank of America Pension Plan for Legacy U.S. Trust Corporation (the U.S. Trust Pension Plan) are substantially similar to the Pension Plan discussed above; however, these plans do not allow participants to select various earnings measures; rather the earnings rate is based on a benchmark rate. In addition, both plans include participants with benefits determined under formulas based on average or career compensation and years of service rather than by reference to a pension account. The Bank of America Pension Plan for Legacy MBNA (the MBNA Pension Plan), the Bank of America Pension Plan for Legacy LaSalle (the LaSalle Pension Plan) and the Countrywide Financial Corporation Inc. Defined Benefit Pension Plan (the Countrywide Pension Plan) provide retirement benefits based on the number of years of benefit service and a percentage of the participant's average annual compensation during the five highest paid consecutive years of the last ten years of employment. Effective December 31, 2008, the Countrywide Pension Plan, LaSalle Pension Plan, MBNA Pension Plan and U.S. Trust Pension Plan merged into the FleetBoston Pension Plan, which was renamed the Bank of America Pension Plan for Legacy Companies. The plan merger did not change participant benefits or benefit accruals as the Bank of America Pension Plan for Legacy Companies continues the respective benefit structures of the five plans for their respective participant groups.

As a result of the Merrill Lynch acquisition, the Corporation assumed the obligations related to the plans of Merrill Lynch. These plans include a terminated U.S. pension plan, non-U.S. pension plans, nonqualified pension plans and postretirement plans. The non-U.S. pension plans vary based on the country and local practices. The terminated U.S. pension plan and the non-U.S. pension plans are referred to as the Other Pension Plans.

In 1988, Merrill Lynch purchased a group annuity contract that guarantees the payment of benefits vested under the terminated U.S. pension plan. The Corporation, under a supplemental agreement, may be responsible for, or benefit from actual experience and investment performance of the annuity assets. The Corporation contributed \$120 million under this agreement during 2009. Additional contributions may be required in the future under this agreement.

The Corporation sponsors a number of noncontributory, nonqualified pension plans (the Nonqualified Pension Plans). As a result of acquisitions, the Corporation assumed the obligations related to the noncontributory, nonqualified pension plans of former FleetBoston, MBNA, U.S. Trust Corporation, LaSalle, Countrywide and Merrill Lynch. These plans, which are unfunded, provide defined pension benefits to certain employees.

In addition to retirement pension benefits, full-time, salaried employees and certain part-time employees may become eligible to continue participation as retirees in health care and/or life insurance plans sponsored by the Corporation. Based on the other provisions of the individual plans, certain retirees may also have the cost of these benefits partially paid by the Corporation. The obligations assumed as a result of the acquisitions are substantially similar to the Corporation's postretirement health and life plans, except for Countrywide which did not have a postretirement health and life plan. Collectively, these plans are referred to as the Postretirement Health and Life Plans.

The tables within this Note include the information related to the Countrywide plans beginning July 1, 2008 and the Merrill Lynch plans beginning January 1, 2009.

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The following table summarizes the changes in the fair value of plan assets, changes in the projected benefit obligation (PBO), the funded status of both the accumulated benefit obligation (ABO) and the PBO, and the weighted-average assumptions used to determine benefit obligations for the pension plans and postretirement plans at December 31, 2009 and 2008. Amounts recognized at December 31, 2009 and 2008 are reflected in other assets, and accrued expenses and other liabilities on the Consolidated Balance Sheet. The discount rate assumption is based

on a cash flow matching technique and is subject to change each year. This technique utilizes yield curves that are based on Aa-rated corporate bonds with cash flows that match estimated benefit payments of each of the plans to produce the discount rate assumptions. The asset valuation method for the Qualified Pension Plans recognizes 60 percent of the prior year's market gains or losses at the next measurement date with the remaining 40 percent spread equally over the subsequent four years.

	Qualified Pension Plans <sup>(1)</sup>		Nonqualified and Other Pension Plans <sup>(1)</sup>		Postretirement Health and Life Plans <sup>(1)</sup>	
	2009	2008	2009	2008	2009	2008
(Dollars in millions)						
<b>Change in fair value of plan assets</b>						
<b>Fair value, January 1</b>	<b>\$ 14,254</b>	<b>\$ 18,720</b>	<b>\$ 2</b>	<b>\$ 2</b>	<b>\$ 110</b>	<b>\$ 165</b>
Countrywide balance, July 1, 2008	–	305	–	–	–	–
Merrill Lynch balance, January 1, 2009	–	–	3,788	–	–	–
Actual return on plan assets	2,238	(5,310)	(58)	–	21	(43)
Company contributions <sup>(2)</sup>	–	1,400	322	154	92	83
Plan participant contributions	–	–	2	–	141	117
Benefits paid	(791)	(861)	(309)	(154)	(272)	(227)
Plan transfer	(1,174)	–	–	–	–	–
Federal subsidy on benefits paid	n/a	n/a	n/a	n/a	21	15
Foreign currency exchange rate changes	n/a	n/a	100	n/a	–	–
<b>Fair value, December 31</b>	<b>\$ 14,527</b>	<b>\$ 14,254</b>	<b>\$ 3,847</b>	<b>\$ 2</b>	<b>\$ 113</b>	<b>\$ 110</b>
<b>Change in projected benefit obligation</b>						
<b>Projected benefit obligation, January 1</b>	<b>\$ 13,724</b>	<b>\$ 14,200</b>	<b>\$ 1,258</b>	<b>\$ 1,307</b>	<b>\$ 1,404</b>	<b>\$ 1,576</b>
Countrywide balance, July 1, 2008	–	439	–	53	–	–
Merrill Lynch balance, January 1, 2009	–	–	2,963	–	226	–
Service cost	387	343	34	7	16	16
Interest cost	740	837	243	77	93	87
Plan participant contributions	–	–	2	–	141	117
Plan amendments	37	5	–	–	–	–
Actuarial loss (gain)	89	(1,239)	137	(32)	(11)	(180)
Benefits paid	(791)	(861)	(309)	(154)	(272)	(227)
Plan transfer	(1,174)	–	–	–	–	–
Termination benefits	36	–	–	–	–	–
Curtailments	–	–	(3)	–	–	–
Federal subsidy on benefits paid	n/a	n/a	n/a	n/a	21	15
Foreign currency exchange rate changes	n/a	n/a	111	n/a	2	–
<b>Projected benefit obligation, December 31</b>	<b>\$ 13,048</b>	<b>\$ 13,724</b>	<b>\$ 4,436</b>	<b>\$ 1,258</b>	<b>\$ 1,620</b>	<b>\$ 1,404</b>
<b>Amount recognized, December 31</b>	<b>\$ 1,479</b>	<b>\$ 530</b>	<b>\$ (589)</b>	<b>\$ (1,256)</b>	<b>\$ (1,507)</b>	<b>\$ (1,294)</b>
<b>Funded status, December 31</b>						
Accumulated benefit obligation	\$ 12,198	\$ 12,864	\$ 4,317	\$ 1,246	n/a	n/a
Overfunded (unfunded) status of ABO	2,329	1,390	(470)	(1,244)	n/a	n/a
Provision for future salaries	850	860	119	12	n/a	n/a
Projected benefit obligation	13,048	13,724	4,436	1,258	\$ 1,620	\$ 1,404
<b>Weighted-average assumptions, December 31</b>						
Discount rate	5.75%	6.00%	5.63%	6.00%	5.75%	6.00%
Rate of compensation increase	4.00	4.00	4.69	4.00	n/a	n/a

<sup>(1)</sup>The measurement date for the Qualified Pension Plans, Nonqualified and Other Pension Plans, and Postretirement Health and Life Plans was December 31 of each year reported.

<sup>(2)</sup>The Corporation's best estimate of its contributions to be made to the Qualified Pension Plans, Nonqualified and Other Pension Plans, and Postretirement Health and Life Plans in 2010 is \$0, \$230 million and \$116 million, respectively.

n/a = not applicable

Amounts recognized in the Consolidated Financial Statements at December 31, 2009 and 2008 were as follows:

	Qualified Pension Plans		Nonqualified and Other Pension Plans		Postretirement Health and Life Plans	
	2009	2008	2009	2008	2009	2008
(Dollars in millions)						
Other assets	\$ 1,479	\$ 607	\$ 831	\$ –	\$ –	\$ –
Accrued expenses and other liabilities	–	(77)	(1,420)	(1,256)	(1,507)	(1,294)
<b>Net amount recognized at December 31</b>	<b>\$ 1,479</b>	<b>\$ 530</b>	<b>\$ (589)</b>	<b>\$ (1,256)</b>	<b>\$ (1,507)</b>	<b>\$ (1,294)</b>

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Net periodic benefit cost (income) for 2009, 2008 and 2007 included the following components:

	Qualified Pension Plans			Nonqualified and Other Pension Plans			Postretirement Health and Life Plans		
	2009	2008	2007	2009	2008	2007	2009	2008	2007
(Dollars in millions)									
<b>Components of net periodic benefit cost (income)</b>									
Service cost	\$ 387	\$ 343	\$ 316	\$ 34	\$ 7	\$ 9	\$ 16	\$ 16	\$ 16
Interest cost	740	837	761	243	77	71	93	87	84
Expected return on plan assets	(1,231)	(1,444)	(1,312)	(222)	—	—	(8)	(13)	(8)
Amortization of transition obligation	—	—	—	—	—	—	31	31	32
Amortization of prior service cost (credits)	39	33	47	(8)	(8)	(7)	—	—	—
Amortization of net actuarial loss (gain)	377	83	156	5	14	17	(77)	(81)	(60)
Recognized loss (gain) due to settlements and curtailments	—	—	—	—	—	14	—	—	(2)
Recognized termination benefit costs	36	—	—	—	—	—	—	—	—
<b>Net periodic benefit cost (income)</b>	<b>\$ 348</b>	<b>\$ (148)</b>	<b>\$ (32)</b>	<b>\$ 52</b>	<b>\$ 90</b>	<b>\$ 104</b>	<b>\$ 55</b>	<b>\$ 40</b>	<b>\$ 62</b>
<b>Weighted-average assumptions used to determine net cost for the years ended December 31</b>									
Discount rate	6.00%	6.00%	5.75%	5.86%	6.00%	5.75%	6.00%	6.00%	5.75%
Expected return on plan assets	8.00	8.00	8.00	5.66	n/a	n/a	8.00	8.00	8.00
Rate of compensation increase	4.00	4.00	4.00	4.61	4.00	4.00	n/a	n/a	n/a
n/a = not applicable									

The net periodic benefit cost (income) for each of the Plans in 2009 includes the results of Merrill Lynch. The net periodic benefit cost (income) of the Merrill Lynch Nonqualified and Other Pension Plans, and Postretirement Health and Life Plans was \$(20) million and \$18 million in 2009 using a blended discount rate of 5.59 percent at January 1, 2009. The net periodic benefit cost (income) for 2009 and 2008 includes the results of Countrywide. The net periodic benefit cost of the Countrywide Qualified Pension Plan was \$29 million in 2008 using a discount rate of 6.75 percent at July 1, 2008. The net periodic benefit cost of the Countrywide Nonqualified Pension Plan was \$1 million. Countrywide did not have a Postretirement Health and Life Plan.

Net periodic postretirement health and life expense was determined using the "projected unit credit" actuarial method. Gains and losses for all benefits except postretirement health care are recognized in accordance with the standard amortization provisions of the applicable accounting guidance. For the Postretirement Health Care Plans, 50 percent of the

unrecognized gain or loss at the beginning of the fiscal year (or at subsequent remeasurement) is recognized on a level basis during the year.

Assumed health care cost trend rates affect the postretirement benefit obligation and benefit cost reported for the Postretirement Health Care Plans. The assumed health care cost trend rate used to measure the expected cost of benefits covered by the Postretirement Health Care Plans was 8.00 percent for 2010, reducing in steps to 5.00 percent in 2017 and later years. A one-percentage-point increase in assumed health care cost trend rates would have increased the service and interest costs and the benefit obligation by \$4 million and \$57 million in 2009, \$4 million and \$35 million in 2008, and \$5 million and \$64 million in 2007. A one-percentage-point decrease in assumed health care cost trend rates would have lowered the service and interest costs and the benefit obligation by \$4 million and \$50 million in 2009, \$4 million and \$31 million in 2008, and \$4 million and \$54 million in 2007.

Pre-tax amounts included in accumulated OCI at December 31, 2009 and 2008 were as follows:

	Qualified Pension Plans		Nonqualified and Other Pension Plans		Postretirement Health and Life Plans		Total	
	2009	2008	2009	2008	2009	2008	2009	2008
(Dollars in millions)								
Net actuarial (gain) loss	\$5,937	\$7,232	\$ 479	\$ 70	\$ (106)	\$ (158)	\$6,310	\$7,144
Transition obligation	—	—	—	—	95	126	95	126
Prior service cost (credits)	126	129	(22)	(30)	—	—	104	99
<b>Amounts recognized in accumulated OCI</b>	<b>\$6,063</b>	<b>\$7,361</b>	<b>\$ 457</b>	<b>\$ 40</b>	<b>\$ (11)</b>	<b>\$ (32)</b>	<b>\$6,509</b>	<b>\$7,369</b>

Pre-tax amounts recognized in OCI for 2009 included the following components:

	Qualified Pension Plans	Nonqualified and Other Pension Plans	Postretirement Health and Life Plans	Total
	(Dollars in millions)			
<b>Other changes in plan assets and benefit obligations recognized in OCI</b>				
Current year actuarial (gain) loss		\$ (918)	\$ 416	\$ (526)
Amortization of actuarial gain (loss)		(377)	(8)	(308)
Current year prior service cost		36	—	36
Amortization of prior service credit (cost)		(39)	8	(31)
Amortization of transition obligation		—	—	(31)
<b>Total recognized in OCI</b>		<b>\$ (1,298)</b>	<b>\$ 416</b>	<b>\$ (860)</b>

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The estimated net actuarial loss and prior service cost (credits) for the Qualified Pension Plans that will be amortized from accumulated OCI into net periodic benefit cost (income) during 2010 are pre-tax amounts of \$358 million and \$28 million. The estimated net actuarial loss and prior service cost for the Nonqualified and Other Pension Plans that will be amortized from accumulated OCI into net periodic benefit cost (income) during 2010 are pre-tax amounts of \$2 million and \$(8) million. The estimated net actuarial loss and transition obligation for the Postretirement Health and Life Plans that will be amortized from accumulated OCI into net periodic benefit cost (income) during 2010 are pre-tax amounts of \$(32) million and \$31 million.

### Plan Assets

The Qualified Pension Plans have been established as retirement vehicles for participants, and trusts have been established to secure benefits promised under the Qualified Pension Plans. The Corporation's policy is to invest the trust assets in a prudent manner for the exclusive purpose of providing benefits to participants and defraying reasonable expenses of administration. The Corporation's investment strategy is designed to provide a total return that, over the long term, increases the ratio of assets to liabilities. The strategy attempts to maximize the investment return on assets at a level of risk deemed appropriate by the Corporation while complying with ERISA and any applicable regulations and laws. The investment strategy utilizes asset allocation as a principal determinant for establishing the risk/reward profile of the assets. Asset allocation ranges are established, periodically reviewed, and adjusted as funding levels and liability characteristics change. Active and passive investment managers are employed to help enhance the risk/return profile of the assets. An additional aspect of the investment strategy used to minimize risk (part of the asset allocation plan) includes matching the equity exposure of participant-selected earnings measures. For example, the common stock of the Corporation held in the trust is maintained as an offset to the exposure related to participants who selected to receive an earnings

measure based on the return performance of common stock of the Corporation. No plan assets are expected to be returned to the Corporation during 2010.

The assets of the non-U.S. plans are primarily attributable to the U.K. pension plan. The U.K. pension plan's assets are invested prudently so that the benefits promised to members are provided with consideration given to the nature and the duration of the plan's liabilities. The current planned investment strategy was set following an asset-liability study and advice from the Trustee's investment advisors. The selected asset allocation strategy is designed to achieve a higher return than the lowest risk strategy while maintaining a prudent approach to meeting the plan's liabilities.

The Expected Return on Asset assumption (EROA assumption) was developed through analysis of historical market returns, historical asset class volatility and correlations, current market conditions, anticipated future asset allocations, the funds' past experience, and expectations on potential future market returns. The EROA assumption is determined using the calculated market-related value for the Qualified Pension Plans and the fair value for the Postretirement Health and Life Plans. The EROA assumption represents a long-term average view of the performance of the assets in the Qualified Pension Plans, the Nonqualified and Other Pension Plans, and the Postretirement Health and Life Plans, a return that may or may not be achieved during any one calendar year. Some of the building blocks used to arrive at the long-term return assumption include an implied return from equity securities of 8.75 percent, debt securities of 5.75 percent, and real estate of 7.00 percent for the Qualified Pension Plans, Nonqualified and Other Pension Plans, and Postretirement Health and Life Plans. The terminated U.S. pension plan is solely invested in a group annuity contract which was primarily invested in fixed income securities structured such that asset maturities match the duration of the plan's obligations.

The target allocations for 2010 by asset category for the Qualified Pension Plans, Nonqualified and Other Pension Plans, and Postretirement Health and Life Plans are as follows:

### Asset Category

	2010 Target Allocation		
	Qualified Pension Plans	Nonqualified and Other Pension Plans	Postretirement Health and Life Plans
Equity securities	60 – 80%	5 – 15%	50 – 75%
Debt securities	20 – 40	65 – 80	25 – 45
Real estate	0 – 5	0 – 5	0 – 5
Other	0 – 10	5 – 20	0 – 5

Equity securities for the Qualified Pension Plans include common stock of the Corporation in the amounts of \$224 million (1.54 percent of total plan assets) and \$269 million (1.88 percent of total plan assets) at December 31, 2009 and 2008.

### Fair Value Measurements

For information on fair value measurements, including descriptions of Level 1, 2 and 3 of the fair value hierarchy and the valuation methods employed by the Corporation, see *Note 1 – Summary of Significant Accounting Principles* and *Note 20 – Fair Value Measurements*.



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Plan investment assets measured at fair value by level and in total at December 31, 2009 are summarized in the table below.

(Dollars in millions)	Fair Value Measurements Using			Total
	Level 1	Level 2	Level 3	
Money market and interest-bearing cash	\$ 1,282	\$ –	\$ –	\$ 1,282
U.S. government and government agency obligations	1,460	1,422	–	2,882
Corporate debt	–	1,301	–	1,301
Asset-backed securities	–	1,116	–	1,116
Mutual funds <sup>(1)</sup>	777	–	–	777
Common and collective trusts <sup>(2)</sup>	–	2,764	18	2,782
Common and preferred stocks	5,424	–	–	5,424
Foreign equity securities	653	–	–	653
Foreign debt securities	268	611	6	885
Foreign common collective trusts	–	289	–	289
Foreign other	–	18	266	284
Real estate	–	–	119	119
Participant loans	–	–	74	74
Other investments	30	402	187	619
<b>Total plan investment assets, at fair value</b>	<b>\$ 9,894</b>	<b>\$ 7,923</b>	<b>\$ 670</b>	<b>\$18,487</b>

<sup>(1)</sup>Balance as of December 31, 2009 includes \$386 million of international equity developed markets funds, \$230 million of U.S. large cap equity funds, \$68 million of U.S. small cap equity funds, \$55 million of emerging market bond funds, \$23 million of real estate funds, \$13 million of emerging market equity funds and \$2 million of short-term bond funds.

<sup>(2)</sup>Balance as of December 31, 2009 includes \$1 billion of U.S. large cap equity funds, \$646 million of international equity developed markets funds, \$883 million of intermediate-term bond funds, \$149 million of short-term bond funds, \$39 million of U.S. mid cap equity funds, \$18 million of real estate funds, \$14 million of alternative commodities funds, \$10 million of emerging markets equity funds and \$23 million of U.S. small cap equity funds.

The table below presents a reconciliation of all Plan investment assets measured at fair value using significant unobservable inputs (Level 3) during 2009.

### Level 3 – Fair Value Measurements

(Dollars in millions)	Balance January 1, 2009	Actual Return on Plan Assets Still Held at the Reporting Date <sup>(1)</sup>	Purchases, Sales and Settlements	Transfers into / (out of) Level 3	Balance December 31, 2009
Common and Collective Trusts	\$ 26	\$ (8)	\$ –	\$ –	\$ 18
Foreign debt securities	7	(1)	–	–	6
Foreign other	328	(100)	38	–	266
Real estate	149	(30)	–	–	119
Participant loans	74	–	–	–	74
Other investments	237	(75)	5	20	187
<b>Total</b>	<b>\$ 821</b>	<b>\$ (214)</b>	<b>\$ 43</b>	<b>\$ 20</b>	<b>\$ 670</b>

<sup>(1)</sup>The Corporation did not sell any level 3 plan assets during the year.

### Projected Benefit Payments

Benefit payments projected to be made from the Qualified Pension Plans, the Nonqualified and Other Pension Plans, and the Postretirement Health and Life Plans are as follows:

(Dollars in millions)	Qualified Pension Plans <sup>(1)</sup>	Nonqualified and Other Pension Plans <sup>(2)</sup>	Postretirement Health and Life Plans	
			Net Payments <sup>(3)</sup>	Medicare Subsidy
2010	\$ 883	\$ 309	\$ 163	\$ 20
2011	896	265	166	20
2012	902	287	167	20
2013	900	285	167	21
2014	900	278	167	21
2015 - 2019	4,582	1,461	785	100

<sup>(1)</sup>Benefit payments expected to be made from the plans' assets.

<sup>(2)</sup>Benefit payments expected to be made from the Corporation's assets.

<sup>(3)</sup>Benefit payments (net of retiree contributions) expected to be made from a combination of the plans' and the Corporation's assets.

### Defined Contribution Plans

The Corporation maintains qualified defined contribution retirement plans and nonqualified defined contribution retirement plans. As a result of the Merrill Lynch acquisition, the Corporation also maintains the defined contribution plans of Merrill Lynch which include the 401(k) Savings & Investment Plan, the Retirement and Accumulation Plan (RAP) and the Employee Stock Ownership Plan (ESOP). The Corporation contributed

approximately \$605 million, \$454 million and \$420 million in 2009, 2008 and 2007, respectively, in cash, to the qualified defined contribution plans. At December 31, 2009 and 2008, 203 million shares and 104 million shares of the Corporation's common stock were held by plans. Payments to the plans for dividends on common stock were \$8 million, \$214 million and \$228 million in 2009, 2008 and 2007, respectively.

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In addition, certain non-U.S. employees within the Corporation are covered under defined contribution pension plans that are separately administered in accordance with local laws.

### NOTE 18 – Stock-Based Compensation Plans

The compensation cost for the plans described below was \$2.8 billion, \$885 million and \$1.2 billion in 2009, 2008 and 2007, respectively. The related income tax benefit was \$1.0 billion, \$328 million and \$438 million for 2009, 2008 and 2007, respectively.

The table below presents the assumptions used to estimate the fair value of stock options granted on the date of grant using the lattice option-pricing model. Lattice option-pricing models incorporate ranges of assumptions for inputs and those ranges are disclosed in the table below. The risk-free interest rate for periods within the contractual life of the stock option is based on the U.S. Treasury yield curve in effect at the time of grant. Expected volatilities are based on implied volatilities from traded stock options on the Corporation's common stock, historical volatility of the Corporation's common stock, and other factors. The Corporation uses historical data to estimate stock option exercise and employee termination within the model. The expected term of stock options granted is derived from the output of the model and represents the period of time that stock options granted are expected to be outstanding. The estimates of fair value from these models are theoretical values for stock options and changes in the assumptions used in the models could result in materially different fair value estimates. The actual value of the stock options will depend on the market value of the Corporation's common stock when the stock options are exercised. No stock options were granted in 2009.

	2008	2007
Risk-free interest rate	2.05 – 3.85%	4.72 – 5.16%
Dividend yield	5.30	4.40
Expected volatility	26.00 – 36.00	16.00 – 27.00
Weighted-average volatility	32.80	19.70
Expected lives (years)	6.6	6.5

Excluded from the table above are assumptions used to estimate the fair value of approximately 108 million stock options assumed in connection with the Merrill Lynch acquisition. The fair value of these awards was estimated using a Black-Scholes option pricing model. Similar to options valued using the lattice option-pricing model described above, key assumptions used include the implied volatility based on the Corporation's common stock of 75 percent, the risk-free interest rate based on the U.S. Treasury yield curve in effect at December 31, 2008, an expected dividend yield of 4.2 percent and the expected life of the options based on their actual remaining term.

The Corporation has equity compensation plans which include the Key Employee Stock Plan, the Key Associate Stock Plan and the Merrill Lynch Employee Stock Compensation Plan. Descriptions of the material features of the equity compensation plans follow.

#### Key Employee Stock Plan

The Key Employee Stock Plan, as amended and restated, provided for different types of awards including stock options, restricted stock shares and restricted stock units. Under the plan, 10-year options to purchase approximately 260 million shares of common stock were granted through

December 31, 2002 to certain employees at the closing market price on the respective grant dates. At December 31, 2009, approximately 45 million fully vested options were outstanding under this plan. No further awards may be granted.

#### Key Associate Stock Plan

On April 24, 2002, the shareholders approved the Key Associate Stock Plan to be effective January 1, 2003. This approval authorized and reserved 200 million shares for grant in addition to the remaining amount under the Key Employee Stock Plan as of December 31, 2002, which was approximately 34 million shares plus any shares covered by awards under the Key Employee Stock Plan that terminate, expire, lapse or are cancelled after December 31, 2002. Subsequently, the shareholders authorized an additional 282 million shares for grant under the Key Associate Stock Plan. In conjunction with the Merrill Lynch acquisition, the shareholders authorized an additional 105 million shares for grant under the Key Associate Stock Plan. At December 31, 2009, approximately 152 million options were outstanding under this plan. Approximately 90 million shares of restricted stock and restricted stock units were granted in 2009. These shares of restricted stock generally vest in three equal annual installments beginning one year from the grant date with the exception of financial advisor awards that vest eight years from grant date.

#### Employee Stock Compensation Plan

The Corporation assumed the Merrill Lynch Employee Stock Compensation Plan. Future shares can be granted under this plan. Approximately 34 million shares of restricted stock units were granted in 2009 which generally vest in three equal annual installments beginning one year from the grant date. Awards granted prior to 2009 generally vest in four equal annual installments beginning one year from the grant date. At December 31, 2009, there were approximately 48 million shares outstanding.

The following table presents the status of all option plans at December 31, 2009, and changes during 2009.

#### Employee stock options

	Shares	Weighted-average Exercise Price
Outstanding at January 1, 2009	232,429,057	\$ 43.08
Merrill Lynch acquisition, January 1, 2009	107,521,280	62.89
Exercised	(2,835)	12.56
Forfeited	(36,224,754)	46.31
<b>Outstanding at December 31, 2009 <sup>(1)</sup></b>	<b>303,722,748</b>	<b>49.71</b>
Options exercisable at December 31, 2009	275,180,674	49.45
Options vested and expected to vest <sup>(2)</sup>	303,640,869	49.71

<sup>(1)</sup>Includes 45 million options under the Key Employee Stock Plan, 152 million options under the Key Associate Stock Plan and 107 million options to employees of predecessor companies assumed in mergers.

<sup>(2)</sup>Includes vested shares and nonvested shares after a forfeiture rate is applied.

At December 31, 2009, the Corporation had no aggregate intrinsic value of options outstanding, exercisable, and vested and expected to vest. The weighted-average remaining contractual term of options outstanding was 3.7 years, options exercisable was 3.2 years, and options vested and expected to vest was 3.7 years at December 31, 2009.

The weighted-average grant-date fair value of options granted in 2008 and 2007 was \$8.92 and \$8.44. No options were granted in 2009.

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The following table presents the status of the restricted stock/unit awards at December 31, 2009, and changes during 2009.

### Restricted stock/unit awards

	Shares	Weighted- average Grant Date Fair Value
Outstanding at January 1, 2009	32,715,964	\$ 45.45
Merrill Lynch acquisition, January 1, 2009	83,446,110	14.08
Granted	124,146,773	10.57
Vested	(31,181,360)	31.46
Cancelled	(34,099,465)	14.39
<b>Outstanding at December 31, 2009</b>	<b>175,028,022</b>	<b>14.30</b>

At December 31, 2009, there was \$677 million of total unrecognized compensation cost related to share-based compensation arrangements for all awards that is expected to be recognized over a weighted-average period of 0.89 years. The total fair value of restricted stock vested in 2009 was \$203 million. In 2009, the amount of cash used to settle equity instruments was \$397 million.

### Other Stock Plans

As a result of the Merrill Lynch acquisition, the Corporation assumed the obligations of outstanding awards granted under the Merrill Lynch Financial Advisor Capital Accumulation Award Plans (FACAAP) and the Merrill

Lynch Employee Stock Purchase Plan (ESPP). The FACAAP is no longer an active plan and no awards were granted in 2009. Awards granted in 2003 and thereafter are generally payable eight years from the grant date in a fixed number of the Corporation's common stock. For outstanding awards granted prior to 2003, payment is generally made ten years from the grant date in a fixed number of the Corporation's common stock unless the fair value of such shares is less than a specified minimum value, in which case, the minimum value is paid in cash. At December 31, 2009, there were 23 million shares outstanding under this plan.

The ESPP allows eligible associates to invest from one percent to 10 percent of eligible compensation to purchase the Corporation's common stock, subject to legal limits. Purchases were made at a discount of up to five percent of the average high and low market price on the relevant purchase date and the maximum annual contribution per employee was \$23,750 in 2009. Up to 107 million shares have been authorized for issuance under the ESPP in 2009. The activity during 2009 is as follows:

	Shares
Available at January 1, 2009	16,449,696
Purchased through plan	(4,019,593)
<b>Available at December 31, 2009</b>	<b>12,430,103</b>

The weighted-average fair value of the ESPP stock purchase rights (i.e. the five percent discount on the Corporation's common stock purchases) exercised by employees in 2009 is \$0.57 per stock purchase right.

## NOTE 19 – Income Taxes

The components of income tax expense (benefit) for 2009, 2008 and 2007 were as follows:

(Dollars in millions)	2009	2008	2007
<b>Current income tax expense (benefit)</b>			
Federal	\$(3,576)	\$ 5,075	\$5,210
State	555	561	681
Foreign	735	585	804
Total current expense (benefit)	(2,286)	6,221	6,695
<b>Deferred income tax expense (benefit)</b>			
Federal	792	(5,269)	(710)
State	(620)	(520)	(18)
Foreign	198	(12)	(25)
Total deferred expense (benefit)	370	(5,801)	(753)
<b>Total income tax expense (benefit) <sup>(1)</sup></b>	<b>\$(1,916)</b>	<b>\$ 420</b>	<b>\$5,942</b>

<sup>(1)</sup> Does not reflect the deferred tax effects of unrealized gains and losses on AFS debt and marketable equity securities, foreign currency translation adjustments, derivatives and employee benefit plan adjustments that are included in accumulated OCI. As a result of these tax effects, accumulated OCI decreased \$1.6 billion in 2009, increased \$5.9 billion in 2008 and decreased \$5.0 billion in 2007. Also, does not reflect the tax effects associated with the Corporation's employee stock plans which decreased common stock and additional paid-in capital \$295 million and \$9 million in 2009 and 2008, and increased common stock and additional paid-in capital \$251 million in 2007. Goodwill was reduced \$0, \$9 million and \$47 million in 2009, 2008 and 2007, respectively, reflecting certain tax benefits attributable to exercises of employee stock options issued by acquired companies which had vested prior to the merger dates.

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Income tax expense (benefit) for 2009, 2008 and 2007 varied from the amount computed by applying the statutory income tax rate to income before income taxes. A reconciliation between the expected federal

income tax expense using the federal statutory tax rate of 35 percent to the Corporation's actual income tax expense (benefit) and resulting effective tax rate for 2009, 2008 and 2007 is presented in the following table.

	2009		2008		2007	
	Amount	Percent	Amount	Percent	Amount	Percent
(Dollars in millions)						
Expected federal income tax expense	\$ 1,526	35.0%	\$ 1,550	35.0%	\$ 7,323	35.0%
Increase (decrease) in taxes resulting from:						
State tax expense (benefit), net of federal effect	(42)	(1.0)	27	0.6	431	2.1
Tax-exempt income, including dividends	(863)	(19.8)	(631)	(14.3)	(683)	(3.3)
Foreign tax differential	(709)	(16.3)	(192)	(4.3)	(485)	(2.3)
Low income housing credits/other credits	(668)	(15.3)	(722)	(16.3)	(590)	(2.8)
Change in U.S. federal valuation allowance	(650)	(14.9)	—	—	—	—
Loss on certain foreign subsidiary stock	(595)	(13.7)	—	—	—	—
Non-U.S. leasing — restructuring	—	—	—	—	(221)	(1.1)
Leveraged lease tax differential	59	1.4	216	4.9	148	0.7
Changes in prior period UTBs (including interest)	87	2.0	169	3.8	143	0.7
Other	(61)	(1.4)	3	0.1	(124)	(0.6)
<b>Total income tax expense (benefit)</b>	<b>\$ (1,916)</b>	<b>(44.0)%</b>	<b>\$ 420</b>	<b>9.5%</b>	<b>\$ 5,942</b>	<b>28.4%</b>

The reconciliation of the beginning unrecognized tax benefits (UTB) balance to the ending balance is presented in the following table.

### Reconciliation of the Change in Unrecognized Tax Benefits

	2009	2008	2007
(Dollars in millions)			
<b>Beginning balance</b>	<b>\$3,541</b>	<b>\$3,095</b>	<b>\$2,667</b>
Increases related to positions taken during prior years	791	688	67
Increases related to positions taken during the current year	181	241	456
Positions acquired or assumed in business combinations	1,924	169	328
Decreases related to positions taken during prior years	(554)	(371)	(227)
Settlements	(615)	(209)	(108)
Expiration of statute of limitations	(15)	(72)	(88)
<b>Ending balance</b>	<b>\$5,253</b>	<b>\$3,541</b>	<b>\$3,095</b>

As of December 31, 2009, 2008 and 2007, the balance of the Corporation's UTBs which would, if recognized, affect the Corporation's effective tax rate was \$4.0 billion, \$2.6 billion and \$1.8 billion, respectively. Included in the UTB balance are some items, the recognition of which would not affect the effective tax rate, such as the tax effect of certain temporary differences, the portion of gross state UTBs that would be offset by the tax benefit of the associated federal deduction and the portion of gross foreign UTBs that would be offset by tax reductions in other jurisdictions.

The Corporation is under examination by the IRS and other tax authorities in countries and states in which it has significant business operations. The table below summarizes the status of significant U.S. federal examinations (unless otherwise noted) for the Corporation and various acquired subsidiaries as of December 31, 2009.

	Years under examination <sup>(1)</sup>	Status at December 31, 2009
Bank of America Corporation	2000-2002	In Appeals process
Bank of America Corporation	2003-2005	Field examination
Merrill Lynch – U.S.	2004	In Appeals process
Merrill Lynch – U.S.	2005-2007	Field examination
Merrill Lynch – U.K.	2007	Field examination
FleetBoston	1997-2000	In Appeals process
FleetBoston	2001-2004	Field examination
LaSalle	2003-2005	Field examination
Countrywide	2005-2006	Field examination
Countrywide	2007	Field examination

<sup>(1)</sup>All tax years in material jurisdictions subsequent to the above years remain open to examination.

In addition to the above examinations, the Corporation is in the process of appealing an adverse decision by the U.S. Tax Court with respect to a 1987 Merrill Lynch transaction. The income tax associated with this matter has been remitted and is included in the UTB balance above.

With the exception of the 2003 through 2005 tax years of Bank of America and the issues for which protests have been filed for Bank of America and Merrill Lynch as described below, it is reasonably possible that all above U.S. federal examinations will be concluded during the next twelve months.

During 2008, the IRS announced a settlement initiative related to lease-in, lease-out (LILLO) and sale-in, lease-out (SILO) leveraged lease transactions. The Corporation executed closing agreements under this settlement initiative in late 2009 for all of these transactions for Bank of America Corporation and predecessor companies. Determinations of final tax and interest are expected to be finalized by the end of the first quarter of 2010. As a result of prior remittances, the Corporation does not expect to pay additional tax and interest related to the settlement initiative.

The remaining unagreed proposed adjustment for Bank of America Corporation for 2000 through 2002 tax years is the disallowance of foreign tax credits related to certain structured investment transactions. The Corporation continues to believe the crediting of these foreign taxes against U.S. income taxes was appropriate and has filed a protest to that effect with the Appeals Office.

The IRS proposed adjustments for two issues in the audit of Merrill Lynch for the tax year 2004 which have been protested to the Appeals Office. The issues involve eligibility for the dividends received deduction

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and foreign tax credits with respect to a structured investment transaction. The Corporation also intends to protest any adjustments the IRS proposes for these same issues in tax years 2005 through 2007.

In 2005 and 2008, Merrill Lynch paid income tax assessments for the fiscal years April 1, 1998 through March 31, 2007 in relation to the taxation of income that was originally reported in other jurisdictions, primarily the U.S. Upon making these payments, Merrill Lynch began the process of obtaining clarification from international tax authorities on the appropriate allocation of income among multiple jurisdictions (Competent Authority) to prevent double taxation of the income. During 2009, an agreement was reached between Japan and the U.S. on the allocation of income during these years. The impact of these settlements resulted in UTB decreases that are reflected in the previous table. All tax years in Japan subsequent to those settled remain open to examination.

The Corporation files income tax returns in more than 100 state and foreign jurisdictions each year and is under continuous examination by various state and foreign taxing authorities. While many of these examinations are resolved every year, the Corporation does not anticipate that resolutions occurring within the next twelve months would result in a material change to the Corporation's financial position.

During 2009, the Corporation resolved many state examinations and issues under state audits. The most significant of these settlements, all of which resulted in UTB decreases, were with California and New York.

Considering all federal and foreign examinations, it is reasonably possible that the UTB balance will decrease by as much as \$1.3 billion during the next twelve months, since resolved items would be removed from the balance whether their resolution resulted in payment or recognition.

During 2009 and 2008, the Corporation recognized in income tax expense, \$184 million and \$147 million of interest and penalties, net of tax. As of December 31, 2009 and 2008, the Corporation's accrual for interest and penalties that related to income taxes, net of taxes and remittances, was \$1.1 billion and \$677 million.

Significant components of the Corporation's net deferred tax assets and liabilities at December 31, 2009 and 2008 are presented in the following table.

(Dollars in millions)	December 31	
	2009	2008
<b>Deferred tax assets</b>		
Net operating loss carryforwards (NOL)	\$17,236	\$ 1,263
Allowance for credit losses	13,011	8,042
Security and loan valuations	4,590	5,590
Employee compensation and retirement benefits	4,021	2,409
Capital loss carryforwards	3,187	–
Other tax credit carryforwards	2,263	–
Accrued expenses	2,134	2,271
State income taxes	1,636	279
Available-for-sale securities	–	1,149
Other	2,308	1,987
Gross deferred tax assets	50,386	22,990
Valuation allowance	(4,315)	(272)
Total deferred tax assets, net of valuation allowance	46,071	22,718
<b>Deferred tax liabilities</b>		
Mortgage servicing rights	5,663	3,404
Long-term borrowings	3,320	–
Intangibles	2,497	1,712
Equipment lease financing	2,411	5,720
Fee income	1,382	1,637
Available-for-sale securities	878	–
Other	2,641	1,549
Gross deferred liabilities	18,792	14,022
<b>Net deferred tax assets <sup>(1)</sup></b>	<b>\$27,279</b>	<b>\$ 8,696</b>

<sup>(1)</sup>The Corporation's net deferred tax assets were adjusted during 2009 and 2008 to include \$20.6 billion and \$3.5 billion of net deferred tax assets related to business combinations.

The following table summarizes the deferred tax assets and related valuation allowances recognized for the net operating and other loss carryforwards and tax credit carryforwards at December 31, 2009.

(Dollars in millions)	Deferred Tax Asset	Valuation Allowance	Net Deferred Tax Asset	First Year
				Expiring
Net operating losses – U.S.	\$ 7,378	\$ –	\$ 7,378	After 2027
Net operating losses – U.K.	9,817	–	9,817	None <sup>(1)</sup>
Net operating losses – U.S. states <sup>(2)</sup>	1,232	(443)	789	Various
Net operating losses – other	41	(41)	–	Various
Capital losses	3,187	(3,187)	–	After 2013
General business credits	1,525	–	1,525	After 2027
Alternative minimum tax credits	123	–	123	None
Foreign tax credits	615	(306)	309	After 2017

<sup>(1)</sup>The U.K. NOL may be carried forward indefinitely. Due to change-in-control limitations in the three years prior to and following the change in ownership, this unlimited carryforward period may be jeopardized by certain major changes in the nature or conduct of the U.K. businesses.

<sup>(2)</sup>The NOL and related valuation allowance for U.S. states before considering the benefit of federal deductions were \$1.9 billion and \$682 million.

With the acquisition of Merrill Lynch on January 1, 2009, the Corporation established a valuation allowance to reduce certain deferred tax assets to the amount more-likely-than-not to be realized before their expiration. During 2009, the Corporation released \$650 million of the valuation allowance attributable to Merrill Lynch's capital loss carryforward due to utilization against net capital gains generated in 2009. The valuation allowance also increased by \$139 million due to increases in operating loss carryforwards and other deferred tax assets generated in certain state and foreign jurisdictions for which management believes it is more-likely-than-not that realization of these assets will not occur.

The Corporation concluded that no valuation allowance is necessary to reduce the U.K. NOL, U.S. federal NOL, and general business credit carryforwards since estimated future taxable income will be sufficient to utilize

these assets prior to their expiration. Merrill Lynch also has U.S. federal capital loss and foreign tax credit carryforwards against which valuation allowances have been recorded to reduce the assets to the amounts the Corporation believes are more-likely-than-not to be realized.

At December 31, 2009 and 2008, federal income taxes had not been provided on \$16.7 billion and \$6.5 billion of undistributed earnings of foreign subsidiaries earned prior to 1987 and after 1997 that have been reinvested for an indefinite period of time. If the earnings were distributed, an additional \$2.5 billion and \$1.1 billion of tax expense, net of credits for foreign taxes paid on such earnings and for the related foreign withholding taxes, would have resulted as of December 31, 2009 and 2008.

## NOTE 20 – Fair Value Measurements

Under applicable accounting guidance, fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The Corporation determines the fair values of its financial instruments based on the fair value hierarchy established under applicable accounting guidance which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. There are three levels of inputs that may be used to measure fair value. The Corporation accounts for certain corporate loans and loan commitments, LHFS, structured reverse repurchase agreements, long-term deposits and long-term debt under the fair value option. For a detailed discussion regarding the fair value hierarchy and how the Corporation measures fair value, see *Note 1 – Summary of Significant Accounting Principles*.

### Level 1, 2 and 3 Valuation Techniques

Financial instruments are considered Level 1 when valuation can be based on quoted prices in active markets for identical assets or liabilities. Level 2 financial instruments are valued using quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or models using inputs that are observable or can be corroborated by observable market data of substantially the full term of the assets or liabilities. Financial instruments are considered Level 3 when their values are determined using pricing models, discounted cash flow methodologies or similar techniques, and at least one significant model assumption or input is unobservable and when determination of the fair value requires significant management judgment or estimation.

The Corporation also uses market indices for direct inputs to certain models where the cash settlement is directly linked to appreciation or depreciation of that particular index (primarily in the context of structured credit products). In those cases, no material adjustments are made to the index-based values. In other cases, market indices are also used as inputs to valuation, but are adjusted for trade specific factors such as rating, credit quality, vintage and other factors.

### Trading Account Assets and Liabilities and Available-for-Sale Debt Securities

The fair values of trading account assets and liabilities are primarily based on actively traded markets where prices are based on either direct market quotes or observed transactions. The fair values of AFS debt securities are generally based on quoted market prices or market prices for similar assets. Liquidity is a significant factor in the determination of the fair values of trading account assets and liabilities and AFS debt securities. Market price quotes may not be readily available for some positions, or positions within a market sector where trading activity has slowed significantly or ceased such as certain CDO positions and other ABS. Some of these instruments are valued using a net asset value approach which considers the value of the underlying securities. Underlying assets are valued using external pricing services, where available, or matrix pricing based on the vintages and ratings. Situations of illiquidity generally are triggered by the market's perception of credit uncertainty regarding a single company or a specific market sector. In these instances, fair value is determined based on limited available market information and other factors, principally from reviewing the issuer's

financial statements and changes in credit ratings made by one or more ratings agencies.

### Derivative Assets and Liabilities

The fair values of derivative assets and liabilities traded in the over-the-counter market are determined using quantitative models that require the use of multiple market inputs including interest rates, prices and indices to generate continuous yield or pricing curves and volatility factors, which are used to value the position. The majority of market inputs are actively quoted and can be validated through external sources, including brokers, market transactions and third-party pricing services. Estimation risk is greater for derivative asset and liability positions that are either option-based or have longer maturity dates where observable market inputs are less readily available or are unobservable, in which case, quantitative-based extrapolations of rate, price or index scenarios are used in determining fair values. The fair values of derivative assets and liabilities include adjustments for market liquidity, counterparty credit quality and other deal specific factors, where appropriate. The Corporation incorporates within its fair value measurements of over-the-counter derivatives the net credit differential between the counterparty credit risk and the Corporation's own credit risk. An estimate of severity of loss is also used in the determination of fair value, primarily based on market data.

### Corporate Loans and Loan Commitments

The fair values of loans and loan commitments are based on market prices, where available, or discounted cash flow analyses using market-based credit spreads of comparable debt instruments or credit derivatives of the specific borrower or comparable borrowers. Results of discounted cash flow calculations may be adjusted, as appropriate, to reflect other market conditions or the perceived credit risk of the borrower.

### Mortgage Servicing Rights

The fair values of MSRs are determined using models which depend on estimates of prepayment rates, the resultant weighted-average lives of the MSRs and the OAS levels. For more information on MSRs, see *Note 22 – Mortgage Servicing Rights*.

### Loans Held-for-Sale

The fair values of LHFS are based on quoted market prices, where available, or are determined by discounting estimated cash flows using interest rates approximating the Corporation's current origination rates for similar loans adjusted to reflect the inherent credit risk.

### Other Assets

The Corporation estimates the fair values of certain other assets including AFS marketable equity securities and certain retained residual interests in securitization vehicles. The fair values of AFS marketable equity securities are generally based on quoted market prices or market prices for similar assets. However, non-public investments are initially valued at the transaction price and subsequently adjusted when evidence is available to support such adjustments. The fair value of retained residual interests in securitization vehicles are based on certain observable inputs such as interest rates and credit spreads, as well as unobservable inputs such as estimated net charge-off and payment rates.

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**Securities Financing Agreements**

The fair values of certain reverse repurchase arrangements, repurchase arrangements and securities borrowed transactions are determined using quantitative models, including discounted cash flow models that require the use of multiple market inputs including interest rates and spreads to generate continuous yield or pricing curves and volatility factors. The majority of market inputs are actively quoted and can be validated through external sources, including brokers, market transactions and third party pricing services.

**Deposits, Commercial Paper and Other Short-term Borrowings, and Certain Structured Notes Classified as Long-term Debt**

The fair values of deposits, commercial paper and other short-term borrowings, and certain structured notes that are classified as long-term debt are determined using quantitative models, including discounted cash

**Recurring Fair Value**

Assets and liabilities carried at fair value on a recurring basis at December 31, 2009, including financial instruments which the Corporation accounts for under the fair value option, are summarized in the table below.

(Dollars in millions)	December 31, 2009				
	Fair Value Measurements Using			Netting Adjustments <sup>(1)</sup>	Assets/Liabilities at Fair Value
	Level 1	Level 2	Level 3		
<b>Assets</b>					
Federal funds sold and securities borrowed or purchased under agreements to resell	\$ —	\$ 57,775	\$ —	\$ —	\$ 57,775
Trading account assets:					
U.S. government and agency securities	17,140	27,445	—	—	44,585
Corporate securities, trading loans and other	4,772	41,157	11,080	—	57,009
Equity securities	25,274	7,204	1,084	—	33,562
Foreign sovereign debt	18,353	8,647	1,143	—	28,143
Mortgage trading loans and asset-backed securities	—	11,137	7,770	—	18,907
Total trading account assets	65,539	95,590	21,077	—	182,206
Derivative assets	3,326	1,467,855	23,048	(1,413,540)	80,689
Available-for-sale debt securities:					
U.S. Treasury securities and agency debentures	19,571	3,454	—	—	23,025
Mortgage-backed securities:					
Agency	—	166,246	—	—	166,246
Agency-collateralized mortgage obligations	—	25,781	—	—	25,781
Non-agency residential	—	27,887	7,216	—	35,103
Non-agency commercial	—	6,651	258	—	6,909
Foreign securities	158	3,271	468	—	3,897
Corporate/Agency bonds	—	5,265	927	—	6,192
Other taxable securities	676	14,017	4,549	—	19,242
Tax-exempt securities	—	8,278	6,928	—	15,206
Total available-for-sale debt securities	20,405	260,850	20,346	—	301,601
Loans and leases	—	—	4,936	—	4,936
Mortgage servicing rights	—	—	19,465	—	19,465
Loans held-for-sale	—	25,853	6,942	—	32,795
Other assets	35,411	12,677	7,821	—	55,909
<b>Total assets</b>	<b>\$ 124,681</b>	<b>\$ 1,920,600</b>	<b>\$ 103,635</b>	<b>\$ (1,413,540)</b>	<b>\$ 735,376</b>
<b>Liabilities</b>					
Interest-bearing deposits in domestic offices	\$ —	\$ 1,663	\$ —	\$ —	\$ 1,663
Federal funds purchased and securities loaned or sold under agreements to repurchase	—	37,325	—	—	37,325
Trading account liabilities:					
U.S. government and agency securities	22,339	4,180	—	—	26,519
Equity securities	17,300	1,107	—	—	18,407
Foreign sovereign debt	12,028	483	386	—	12,897
Corporate securities and other	282	7,317	10	—	7,609
Total trading account liabilities	51,949	13,087	396	—	65,432
Derivative liabilities	2,925	1,443,494	15,185	(1,417,876)	43,728
Commercial paper and other short-term borrowings	—	813	—	—	813
Accrued expenses and other liabilities	16,797	620	1,598	—	19,015
Long-term debt	—	40,791	4,660	—	45,451
<b>Total liabilities</b>	<b>\$ 71,671</b>	<b>\$ 1,537,793</b>	<b>\$ 21,839</b>	<b>\$ (1,417,876)</b>	<b>\$ 213,427</b>

<sup>(1)</sup>Amounts represent the impact of legally enforceable master netting agreements that allow the Corporation to settle positive and negative positions and also cash collateral held or placed with the same counterparties.

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Assets and liabilities carried at fair value on a recurring basis at December 31, 2008, including financial instruments which the Corporation accounts for under the fair value option, are summarized in the table below.

(Dollars in millions)	December 31, 2008				
	Fair Value Measurements Using			Netting Adjustments <sup>(1)</sup>	Assets/Liabilities at Fair Value
	Level 1	Level 2	Level 3		
<b>Assets</b>					
Federal funds sold and securities borrowed or purchased under agreements to resell	\$ –	\$ 2,330	\$ –	\$ –	\$ 2,330
Trading account assets	44,571	83,011	6,733	–	134,315
Derivative assets	2,109	1,525,106	8,289	(1,473,252)	62,252
Available-for-sale debt securities	2,789	255,413	18,702	–	276,904
Loans and leases	–	–	5,413	–	5,413
Mortgage servicing rights	–	–	12,733	–	12,733
Loans held-for-sale	–	15,582	3,382	–	18,964
Other assets	25,407	25,549	4,157	–	55,113
<b>Total assets</b>	<b>\$74,876</b>	<b>\$1,906,991</b>	<b>\$59,409</b>	<b>\$ (1,473,252)</b>	<b>\$ 568,024</b>
<b>Liabilities</b>					
Interest-bearing deposits in domestic offices	\$ –	\$ 1,717	\$ –	\$ –	\$ 1,717
Trading account liabilities	37,410	14,313	–	–	51,723
Derivative liabilities	4,872	1,488,509	6,019	(1,468,691)	30,709
Accrued expenses and other liabilities	5,602	–	1,940	–	7,542
<b>Total liabilities</b>	<b>\$47,884</b>	<b>\$1,504,539</b>	<b>\$ 7,959</b>	<b>\$ (1,468,691)</b>	<b>\$ 91,691</b>

<sup>(1)</sup>Amounts represent the impact of legally enforceable master netting agreements that allow the Corporation to settle positive and negative positions and also cash collateral held or placed with the same counterparties.



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The tables below present a reconciliation of all assets and liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) during 2009, 2008 and 2007, including realized and unrealized gains (losses) included in earnings and accumulated OCI.

**Level 3 Fair Value Measurements**

	2009						
	Balance January 1, 2009 <sup>(1)</sup>	Merrill Lynch Acquisition	Gains (Losses) Included in Earnings	Gains (Losses) Included in OCI	Purchases, Issuances and Settlements	Transfers into / (out of) Level 3 <sup>(1)</sup>	Balance December 31, 2009 <sup>(1)</sup>
(Dollars in millions)							
Trading account assets:							
Corporate securities, trading loans and other	\$ 4,540	\$ 7,012	\$ 370	\$ -	\$ (2,015)	\$ 1,173	\$ 11,080
Equity securities	546	3,848	(396)	-	(2,425)	(489)	1,084
Foreign sovereign debt	-	30	136	-	167	810	1,143
Mortgage trading loans and asset-backed securities	1,647	7,294	(262)	-	933	(1,842)	7,770
Total trading account assets	6,733	18,184	(152)	-	(3,340)	(348)	21,077
Net derivative assets <sup>(2)</sup>	2,270	2,307	5,526	-	(7,906)	5,666	7,863
Available-for-sale debt securities:							
Non-agency MBS:							
Residential	5,439	2,509	(1,159)	2,738	(4,187)	1,876	7,216
Commercial	657	-	(185)	(7)	(155)	(52)	258
Foreign securities	1,247	-	(79)	(226)	(73)	(401)	468
Corporate/Agency bonds	1,598	-	(22)	127	324	(1,100)	927
Other taxable securities	9,599	-	(75)	669	(4,490)	(1,154)	4,549
Tax-exempt securities	162	-	2	26	6,093	645	6,928
Total available-for-sale debt securities	18,702	2,509	(1,518)	3,327	(2,488)	(186)	20,346
Loans and leases <sup>(3)</sup>	5,413	2,452	515	-	(3,718)	274	4,936
Mortgage servicing rights	12,733	209	5,286	-	1,237	-	19,465
Loans held-for-sale <sup>(3)</sup>	3,382	3,872	678	-	(1,048)	58	6,942
Other assets <sup>(4)</sup>	4,157	2,696	1,273	-	(308)	3	7,821
Trading account liabilities:							
Foreign sovereign debt	-	-	(38)	-	-	(348)	(386)
Corporate securities and other	-	-	-	-	4	(14)	(10)
Total trading account liabilities	-	-	(38)	-	4	(362)	(396)
Accrued expenses and other liabilities <sup>(3)</sup>	(1,940)	(1,337)	1,385	-	294	-	(1,598)
Long-term debt <sup>(3)</sup>	-	(7,481)	(2,310)	-	830	4,301	(4,660)

	2008						
	Balance January 1, 2008 <sup>(1)</sup>	Countrywide Acquisition	Gains (Losses) Included in Earnings	Gains (Losses) Included in OCI	Purchases, Issuances and Settlements	Transfers into / (out of) Level 3 <sup>(1)</sup>	Balance December 31, 2008 <sup>(1)</sup>
(Dollars in millions)							
Trading account assets	\$ 4,027	\$ -	\$ (3,222)	\$ -	\$ (1,233)	\$ 7,161	\$ 6,733
Net derivative assets <sup>(2)</sup>	(1,203)	(185)	2,531	-	1,380	(253)	2,270
Available-for-sale debt securities	5,507	528	(2,509)	(1,688)	2,754	14,110	18,702
Loans and leases <sup>(3)</sup>	4,590	-	(780)	-	1,603	-	5,413
Mortgage servicing rights	3,053	17,188	(7,115)	-	(393)	-	12,733
Loans held-for-sale <sup>(3)</sup>	1,334	1,425	(1,047)	-	(542)	2,212	3,382
Other assets <sup>(4)</sup>	3,987	1,407	175	-	(1,372)	(40)	4,157
Accrued expenses and other liabilities <sup>(3)</sup>	(660)	(1,212)	(169)	-	101	-	(1,940)

<sup>(1)</sup>Assets (liabilities)

<sup>(2)</sup>Net derivatives at December 31, 2009 and 2008 include derivative assets of \$23.0 billion and \$8.3 billion and derivative liabilities of \$15.2 billion and \$6.0 billion, respectively.

<sup>(3)</sup>Amounts represent items which are accounted for under the fair value option including commercial loans, loan commitments and LHFS.

<sup>(4)</sup>Other assets is primarily comprised of AFS marketable equity securities and other equity investments.

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**Level 3 Fair Value Measurements**

	2007					Balance December 31, 2007 <sup>(1)</sup>
	Balance January 1, 2007 <sup>(1)</sup>	Gains (Losses) Included in Earnings	Gains (Losses) Included in OCI	Purchases, Issuances, and Settlements	Transfers into / (out of) Level 3 <sup>(1)</sup>	
(Dollars in millions)						
Trading account assets <sup>(2)</sup>	\$ 303	\$ (2,959)	\$ –	\$ 708	\$ 5,975	\$ 4,027
Net derivative assets <sup>(3)</sup>	788	(341)	–	(333)	(1,317)	(1,203)
Available-for-sale debt securities <sup>(2)</sup>	1,133	(398)	(206)	4,588	390	5,507
Loans and leases	3,947	(140)	–	783	–	4,590
Mortgage servicing rights <sup>(2)</sup>	2,869	231	–	(47)	–	3,053
Loans held-for-sale <sup>(2)</sup>	–	(90)	–	(1,259)	2,683	1,334
Other assets <sup>(4)</sup>	6,605	2,149	(79)	(4,638)	(50)	3,987
Accrued expenses and other liabilities	(349)	(279)	–	(32)	–	(660)

<sup>(1)</sup> Assets (liabilities)

<sup>(2)</sup> Amounts represent items which were carried at fair value prior to the adoption of the fair value option.

<sup>(3)</sup> Net derivatives at December 31, 2007 included derivative assets of \$9.0 billion and derivative liabilities of \$10.2 billion. Amounts at January 1, 2007 were accounted for at fair value prior to the adoption of the fair value option.

<sup>(4)</sup> Other assets is primarily comprised of AFS marketable equity securities and other equity investments.

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The tables below summarize gains and losses due to changes in fair value, including both realized and unrealized gains (losses), recorded in earnings for Level 3 assets and liabilities during 2009, 2008 and 2007. These amounts include those gains (losses) generated by loans, LHFS, loan commitments and structured notes which are accounted for under the fair value option.

### Level 3 Total Realized and Unrealized Gains (Losses) Included in Earnings

(Dollars in millions)	2009					Total
	Card Income (Loss)	Equity Investment Income	Trading Account Profits (Losses)	Mortgage Banking Income (Loss) <sup>(1)</sup>	Other Income (Loss)	
Trading account assets:						
Corporate securities, trading loans and other	\$ -	\$ -	\$ 370	\$ -	\$ -	\$ 370
Equity securities	-	-	(396)	-	-	(396)
Foreign sovereign debt	-	-	136	-	-	136
Mortgage trading loans and asset-backed securities	-	-	(262)	-	-	(262)
Total trading account assets	-	-	(152)	-	-	(152)
Net derivative assets	-	-	(2,526)	8,052	-	5,526
Available-for-sale debt securities:						
Non-agency MBS:						
Residential	-	-	-	(20)	(1,139)	(1,159)
Commercial	-	-	-	-	(185)	(185)
Foreign securities	-	-	-	-	(79)	(79)
Corporate/Agency bonds	-	-	-	-	(22)	(22)
Other taxable securities	-	-	-	-	(75)	(75)
Tax-exempt securities	-	-	-	-	2	2
Total available-for-sale debt securities	-	-	-	(20)	(1,498)	(1,518)
Loans and leases <sup>(2)</sup>	-	-	(11)	-	526	515
Mortgage servicing rights	-	-	-	5,286	-	5,286
Loans held-for-sale <sup>(2)</sup>	-	-	(216)	306	588	678
Other assets	21	947	-	244	61	1,273
Trading account liabilities – Foreign sovereign debt	-	-	(38)	-	-	(38)
Accrued expenses and other liabilities <sup>(2)</sup>	-	-	36	(11)	1,360	1,385
Long-term debt <sup>(2)</sup>	-	-	(2,083)	-	(227)	(2,310)
<b>Total</b>	<b>\$ 21</b>	<b>\$ 947</b>	<b>\$ (4,990)</b>	<b>\$ 13,857</b>	<b>\$ 810</b>	<b>\$ 10,645</b>

	2008					
Trading account assets	\$ -	\$ -	\$ (3,044)	\$ (178)	\$ -	\$ (3,222)
Net derivative assets	-	-	103	2,428	-	2,531
Available-for-sale debt securities	-	-	-	(74)	(2,435)	(2,509)
Loans and leases <sup>(2)</sup>	-	-	(5)	-	(775)	(780)
Mortgage servicing rights	-	-	-	(7,115)	-	(7,115)
Loans held-for-sale <sup>(2)</sup>	-	-	(195)	(848)	(4)	(1,047)
Other assets	55	110	-	-	10	175
Accrued expenses and other liabilities <sup>(2)</sup>	-	-	9	295	(473)	(169)
<b>Total</b>	<b>\$ 55</b>	<b>\$ 110</b>	<b>\$ (3,132)</b>	<b>\$ (5,492)</b>	<b>\$ (3,677)</b>	<b>\$ (12,136)</b>

	2007					
Trading account assets <sup>(3)</sup>	\$ -	\$ -	\$ (2,959)	\$ -	\$ -	\$ (2,959)
Net derivative assets <sup>(3)</sup>	-	-	(515)	174	-	(341)
Available-for-sale debt securities <sup>(3, 4)</sup>	-	-	-	-	(398)	(398)
Loans and leases <sup>(2)</sup>	-	-	(1)	-	(139)	(140)
Mortgage servicing rights <sup>(3)</sup>	-	-	-	231	-	231
Loans held-for-sale <sup>(2)</sup>	-	-	(61)	(29)	-	(90)
Other assets <sup>(5)</sup>	103	1,971	-	-	75	2,149
Accrued expenses and other liabilities <sup>(2)</sup>	-	-	(5)	-	(274)	(279)
<b>Total</b>	<b>\$ 103</b>	<b>\$ 1,971</b>	<b>\$ (3,541)</b>	<b>\$ 376</b>	<b>\$ (736)</b>	<b>\$ (1,827)</b>

<sup>(1)</sup>Mortgage banking income does not reflect the impact of Level 1 and Level 2 hedges against MSRs.

<sup>(2)</sup>Amounts represent items which are accounted for under the fair value option.

<sup>(3)</sup>Amounts represent items which are carried at fair value prior to the adoption of the fair value option.

<sup>(4)</sup>Amounts represent write-downs on certain securities that were deemed to be other-than-temporarily impaired during 2007.

<sup>(5)</sup>Amounts represent items which are accounted for under the fair value option.



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### Nonrecurring Fair Value

Certain assets and liabilities are measured at fair value on a nonrecurring basis and are not included in the previous tables in this Note. These assets and liabilities primarily include LHFS, unfunded loan commitments held-for-sale, and foreclosed properties. The amounts below represent only balances measured at fair value during the year and still held as of the reporting date.

### Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis

(Dollars in millions)	At and for the Year Ended December 31, 2009			At and for the Year Ended December 31, 2008		
	Level	Level	(Losses)	Level	Level	(Losses)
	2	3		2	3	
<b>Assets</b>						
Loans held-for-sale	\$2,320	\$7,248	\$ (1,288)	\$1,828	\$9,782	\$ (1,699)
Loans and leases <sup>(1)</sup>	7	8,426	(4,858)	–	2,131	(1,164)
Foreclosed properties <sup>(2)</sup>	–	644	(322)	–	590	(171)
Other assets	31	322	(268)	–	–	–

<sup>(1)</sup>Gains (losses) represent charge-offs associated with real estate-secured loans that exceed 180 days past due which are netted against the allowance for loan and lease losses.

<sup>(2)</sup>Amounts are included in other assets on the Consolidated Balance Sheet and represent fair value and related losses of foreclosed properties that were written down subsequent to their initial classification as foreclosed properties.

### Fair Value Option Elections

#### Corporate Loans and Loan Commitments

The Corporation elected to account for certain large corporate loans and loan commitments which exceeded the Corporation's single name credit risk concentration guidelines under the fair value option. Lending commitments, both funded and unfunded, are actively managed and monitored and, as appropriate, credit risk for these lending relationships may be mitigated through the use of credit derivatives, with the Corporation's credit view and market perspectives determining the size and timing of the hedging activity. These credit derivatives do not meet the requirements for derivatives designated as hedging instruments and are therefore carried at fair value with changes in fair value recorded in other income. Electing the fair value option allows the Corporation to carry these loans and loan commitments at fair value, which is more consistent with management's view of the underlying economics and the manner in which they are managed. In addition, accounting for these loans and loan commitments at fair value reduces the accounting asymmetry that would otherwise result from carrying the loans at historical cost and the credit derivatives at fair value.

At December 31, 2009 and 2008, funded loans which the Corporation elected to carry at fair value had an aggregate fair value of \$4.9 billion and \$5.4 billion recorded in loans and leases and an aggregate outstanding principal balance of \$5.4 billion and \$6.4 billion. At December 31, 2009 and 2008, unfunded loan commitments that the Corporation has elected to carry at fair value had an aggregate fair value of \$950 million and \$1.1 billion recorded in accrued expenses and other liabilities and an aggregate committed exposure of \$27.0 billion and \$16.9 billion. Interest income on these loans is recorded in interest and fees on loans and leases.

#### Loans Held-for-Sale

The Corporation also elected to account for certain LHFS at fair value. Electing to use fair value allows a better offset of the changes in fair values of the loans and the derivative instruments used to economically hedge them. The Corporation has not elected to fair value other LHFS primarily because these loans are floating rate loans that are not economically hedged using derivative instruments. At December 31, 2009 and 2008, residential mortgage loans, commercial mortgage loans, and other LHFS for which the fair value option was elected had an aggregate fair

value of \$32.8 billion and \$18.9 billion and an aggregate outstanding principal balance of \$36.5 billion and \$20.7 billion. Interest income on these loans is recorded in other interest income. These changes in fair value are mostly offset by hedging activities. An immaterial portion of these amounts was attributable to changes in instrument-specific credit risk.

#### Other Assets

The Corporation elected the fair value option for certain other assets. Other assets primarily represents non-marketable convertible preferred shares for which the Corporation has economically hedged a majority of the position with derivatives. At December 31, 2009, these assets had a fair value of \$253 million.

#### Securities Financing Agreements

The Corporation elected the fair value option for certain securities financing agreements. The fair value option election was made for certain securities financing agreements based on the tenor of the agreements which reflects the magnitude of the interest rate risk. The majority of securities financing agreements collateralized by U.S. government securities were excluded from the fair value option election as these contracts are generally short-dated and therefore the interest rate risk is not considered significant. At December 31, 2009, securities financing agreements for which the fair value option has been elected had an aggregate fair value of \$95.1 billion and a principal balance of \$94.6 billion.

#### Long-term Deposits

The Corporation elected to fair value certain long-term fixed-rate and rate-linked deposits which are economically hedged with derivatives. At December 31, 2009 and 2008, these instruments had an aggregate fair value of \$1.7 billion for both years ended and principal balance of \$1.6 billion and \$1.7 billion recorded in interest-bearing deposits. Interest paid on these instruments continues to be recorded in interest expense. Election of the fair value option will allow the Corporation to reduce the accounting volatility that would otherwise result from the accounting asymmetry created by accounting for the financial instruments at historical cost and the economic hedges at fair value. The Corporation did not elect to fair value other financial instruments within the same balance sheet category because they were not economically hedged using derivatives.

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### Commercial Paper and Other Short-term Borrowings

The Corporation elected to fair value certain commercial paper and other short-term borrowings that were acquired as part of the Merrill Lynch acquisition. This debt is risk-managed on a fair value basis. At December 31, 2009, this debt had both an aggregate fair value and a principal balance of \$813 million recorded in commercial paper and other short-term borrowings.

### Long-term Debt

The Corporation elected to fair value certain long-term debt, primarily structured notes, that were acquired as part of the Merrill Lynch acquisition. This long-term debt is risk-managed on a fair value basis. Election of the fair value option will allow the Corporation to reduce the accounting volatility that would otherwise result from the accounting asymmetry created by accounting for the financial instruments at historical cost and the economic hedges at fair value. The Corporation did not elect to fair value other financial instruments within the same balance sheet category because they were not economically hedged using derivatives. At

December 31, 2009, this long-term debt had an aggregate fair value of \$45.5 billion and a principal balance of \$48.6 billion recorded in long-term debt.

### Asset-backed Secured Financings

The Corporation elected to fair value certain asset-backed secured financings that were acquired as part of the Countrywide acquisition. At December 31, 2009, these secured financings had an aggregate fair value of \$707 million and principal balance of \$1.5 billion recorded in accrued expenses and other liabilities. Using the fair value option election allows the Corporation to reduce the accounting volatility that would otherwise result from the accounting asymmetry created by accounting for the asset-backed secured financings at historical cost and the corresponding mortgage LHFS securing these financings at fair value.

The following table provides information about where changes in the fair value of assets or liabilities for which the fair value option has been elected are included in the Consolidated Statement of Income for 2009 and 2008.

### Gains (Losses) Relating to Assets and Liabilities Accounted for Using Fair Value Option

	2009								
	Corporate Loans and Loan Commitments	Loans Held- for- Sale	Securities Financing Agreements	Other Assets	Long- term Deposits	Asset- backed Secured Financings	Commercial Paper and Other Short-term Borrowings	Long- term Debt	Total
(Dollars in millions)									
Trading account profits (losses)	\$ 25	\$ (211)	\$ -	\$ 379	\$ -	\$ -	\$ (236)	\$ (3,938)	\$ (3,981)
Mortgage banking income (loss)	-	8,251	-	-	-	(11)	-	-	8,240
Equity investment income (loss)	-	-	-	(177)	-	-	-	-	(177)
Other income (loss)	1,886	588	(292)	-	35	-	-	(4,900)	(2,683)
<b>Total</b>	<b>\$ 1,911</b>	<b>\$ 8,628</b>	<b>\$ (292)</b>	<b>\$ 202</b>	<b>\$ 35</b>	<b>\$ (11)</b>	<b>\$ (236)</b>	<b>\$ (8,838)</b>	<b>\$ 1,399</b>
	2008								
Trading account profits (losses)	\$ 4	\$ (680)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (676)
Mortgage banking income	-	281	-	-	-	295	-	-	576
Other income (loss)	(1,248)	(215)	(18)	-	(10)	-	-	-	(1,491)
<b>Total</b>	<b>\$ (1,244)</b>	<b>\$ (614)</b>	<b>\$ (18)</b>	<b>\$ -</b>	<b>\$ (10)</b>	<b>\$ 295</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (1,591)</b>

### NOTE 21 – Fair Value of Financial Instruments

The fair values of financial instruments have been derived, in part, by the Corporation's assumptions, the estimated amount and timing of future cash flows and estimated discount rates. Different assumptions could significantly affect these estimated fair values. Accordingly, the net realizable values could be materially different from the estimates presented below. In addition, the estimates are only indicative of the value of individual financial instruments and should not be considered an indication of the fair value of the Corporation.

The following disclosures represent financial instruments in which the ending balance at December 31, 2009 and 2008 are not carried at fair value in its entirety on the Corporation's Consolidated Balance Sheet.

#### Short-term Financial Instruments

The carrying value of short-term financial instruments, including cash and cash equivalents, time deposits placed, federal funds sold and purchased, resale and certain repurchase agreements, commercial paper and other short-term investments and borrowings, approximates the fair value of these instruments. These financial instruments generally expose the Corporation to limited credit risk and have no stated maturities or

have short-term maturities and carry interest rates that approximate market. The Corporation elected to account for certain structured reverse repurchase agreements under the fair value option. See *Note 20 – Fair Value Measurements* for additional information on these structured reverse repurchase agreements.

#### Loans

Fair values were generally determined by discounting both principal and interest cash flows expected to be collected using an observable discount rate for similar instruments with adjustments that the Corporation believes a market participant would consider in determining fair value. The Corporation estimates the cash flows expected to be collected using internal credit risk, interest rate and prepayment risk models that incorporate the Corporation's best estimate of current key assumptions, such as default rates, loss severity and prepayment speeds for the life of the loan. The Corporation elected to account for certain large corporate loans which exceeded the Corporation's single name credit risk concentration guidelines under the fair value option. See *Note 20 – Fair Value Measurements* for additional information on loans for which the Corporation adopted the fair value option.

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### Deposits

The fair value for certain deposits with stated maturities was calculated by discounting contractual cash flows using current market rates for instruments with similar maturities. The carrying value of foreign time deposits approximates fair value. For deposits with no stated maturities, the carrying amount was considered to approximate fair value and does not take into account the significant value of the cost advantage and stability of the Corporation's long-term relationships with depositors. The Corporation elected to account for certain long-term fixed-rate deposits which are economically hedged with derivatives under the fair value option. See *Note 20 – Fair Value Measurements* for additional information on these long-term fixed-rate deposits.

### Long-term Debt

The Corporation uses quoted market prices for its long-term debt when available. When quoted market prices are not available, fair value is estimated based on current market interest rates and credit spreads for debt with similar maturities. The Corporation elected to account for certain structured notes under the fair value option. See *Note 20 – Fair Value Measurements* for additional information on these structured notes.

The carrying and fair values of certain financial instruments at December 31, 2009 and 2008 were as follows:

	December 31			
	2009		2008	
	Carrying Value <sup>(1)</sup>	Fair Value	Carrying Value <sup>(1)</sup>	Fair Value
(Dollars in millions)				
<b>Financial assets</b>				
Loans <sup>(2)</sup>	\$ 841,020	\$813,596	\$ 886,198	\$ 841,629
<b>Financial liabilities</b>				
Deposits	991,611	991,768	882,997	883,987
Long-term debt	438,521	440,246	268,292	260,291

<sup>(1)</sup>The carrying value of loans is presented net of allowance for loan and lease losses. Amounts exclude leases.

<sup>(2)</sup>Fair value is determined based on the present value of future cash flows using credit spreads or risk adjusted rates of return that a buyer of the portfolio would require at December 31, 2009 and 2008. However, the Corporation expects to collect the principal cash flows underlying the book values as well as the related interest cash flows.

## NOTE 22 – Mortgage Servicing Rights

The Corporation accounts for consumer MSR at fair value with changes in fair value recorded in the Consolidated Statement of Income in mortgage banking income. The Corporation economically hedges these MSRs with certain derivatives and securities including MBS and U.S. Treasuries. The securities that economically hedge the MSRs are recorded in other assets with changes in the fair value of the securities and the related interest income recorded as mortgage banking income.

The following table presents activity for residential first mortgage MSRs for 2009 and 2008.

(Dollars in millions)	2009	2008
<b>Balance, January 1</b>	<b>\$12,733</b>	<b>\$ 3,053</b>
Merrill Lynch balance, January 1, 2009	209	—
Countrywide balance, July 1, 2008	—	17,188
Additions / sales	5,728	2,587
Impact of customer payments	(3,709)	(3,313)
Other changes in MSR market value	4,504	(6,782)
<b>Balance, December 31</b>	<b>\$19,465</b>	<b>\$12,733</b>
<b>Mortgage loans serviced for investors (in billions)</b>	<b>\$ 1,716</b>	<b>\$ 1,654</b>

During 2009 and 2008, other changes in MSR market value were \$4.5 billion and \$(6.8) billion. These amounts reflect the change in discount rates and prepayment speed assumptions, mostly due to changes in interest rates, as well as the effect of changes in other assumptions. The

amounts do not include \$782 million in gains in 2009 resulting from lower than expected prepayments and \$(333) million in losses in 2008 resulting from higher than expected prepayments. The net amounts of \$5.3 billion and \$(7.1) billion are included in the line "mortgage banking income (loss)" in the table "Level 3 – Total Realized and Unrealized Gains (Losses) Included in Earnings" in *Note 20 – Fair Value Measurements*.

At December 31, 2009 and 2008, the fair value of consumer MSRs was \$19.5 billion and \$12.7 billion. The Corporation uses an OAS valuation approach to determine the fair value of MSRs which factors in prepayment risk. This approach consists of projecting servicing cash flows under multiple interest rate scenarios and discounting these cash flows using risk-adjusted discount rates. The key economic assumptions used in valuations of MSRs include weighted-average lives of the MSRs and the OAS levels.

Key economic assumptions used in determining the fair value of MSRs at December 31, 2009 and 2008 were as follows:

	December 31			
	2009		2008	
	Fixed	Adjustable	Fixed	Adjustable
(Dollars in millions)				
<b>Weighted-average option adjusted spread</b>	<b>1.67%</b>	<b>4.64%</b>	1.71%	6.40%
<b>Weighted-average life, in years</b>	<b>5.62</b>	<b>3.26</b>	3.26	2.71

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The following table presents the sensitivity of the weighted-average lives and fair value of MSR to changes in modeled assumptions. The sensitivities in the following table are hypothetical and should be used with caution. As the amounts indicate, changes in fair value based on variations in assumptions generally cannot be extrapolated because the relationship of the change in assumption to the change in fair value may not be linear. Also, the effect of a variation in a particular assumption on the fair value of a MSR that continues to be held by the Corporation is calculated without changing any other assumption. In reality, changes in one factor may result in changes in another, which might magnify or counteract the sensitivities. Additionally, the Corporation has the ability to hedge interest rate and market valuation fluctuations associated with MSRs. The below sensitivities do not reflect any hedge strategies that may be undertaken to mitigate such risk.

	December 31, 2009		Change in Fair Value
	Change in Weighted-average Lives		
	Fixed	Adjustable	
(Dollars in millions)			
<b>Prepayment rates</b>			
Impact of 10% decrease	0.32 years	0.14 years	\$ 895
Impact of 20% decrease	0.68	0.31	1,895
Impact of 10% increase	(0.29)	(0.12)	(807)
Impact of 20% increase	(0.54)	(0.22)	(1,540)
<b>OAS level</b>			
Impact of 100 bps decrease	n/a	n/a	\$ 900
Impact of 200 bps decrease	n/a	n/a	1,882
Impact of 100 bps increase	n/a	n/a	(828)
Impact of 200 bps increase	n/a	n/a	(1,592)

n/a = not applicable

Commercial and residential reverse mortgage MSRs are accounted for using the amortization method (i.e., lower of cost or market). Commercial and residential reverse mortgage MSRs totaled \$309 million and \$323 million at December 31, 2009 and 2008 and are not included in the tables above.

## NOTE 23 – Business Segment Information

The Corporation reports the results of its operations through six business segments: *Deposits*, *Global Card Services*, *Home Loans & Insurance*, *Global Banking*, *Global Markets* and *Global Wealth & Investment Management (GWIM)*, with the remaining operations recorded in *All Other*. The Corporation may periodically reclassify business segment results based on modifications to its management reporting methodologies and changes in organizational alignment. Prior period amounts have been reclassified to conform to current period presentation.

### Deposits

*Deposits* includes the results of consumer deposits activities which consist of a comprehensive range of products provided to consumers and small businesses. In addition, *Deposits* includes student lending results and the net effect of its ALM activities. *Deposits* products include traditional savings accounts, money market savings accounts, CDs and IRAs, and noninterest- and interest-bearing checking accounts. These products provide a relatively stable source of funding and liquidity. The Corporation earns net interest spread revenue from investing this liquidity in earning assets through client-facing lending and ALM activities. The revenue is allocated to the deposit products using a funds transfer pricing process which takes into account the interest rates and maturity characteristics of

the deposits. Deposits also generate fees such as account service fees, non-sufficient funds fees, overdraft charges and ATM fees. In addition, *Deposits* includes the impact of migrating customers and their related deposit balances between *GWIM* and *Deposits*. As of the date of migration, the associated net interest income, service fees and noninterest expense are recorded in the segment to which deposits were transferred.

### Global Card Services

*Global Card Services* provides a broad offering of products including U.S. consumer and business card, consumer lending, international card and debit card to consumers and small businesses. The Corporation reports *Global Card Services* results on a managed basis which is consistent with the way that management evaluates the results of *Global Card Services*. Managed basis assumes that securitized loans were not sold and presents earnings on these loans in a manner similar to the way loans that have not been sold (i.e., held loans) are presented. Loan securitization is an alternative funding process that is used by the Corporation to diversify funding sources. Loan securitization removes loans from the Consolidated Balance Sheet through the sale of loans to an off-balance sheet QSPE that is excluded from the Corporation's Consolidated Financial Statements in accordance with applicable accounting guidance.

The performance of the managed portfolio is important in understanding *Global Card Services* results as it demonstrates the results of the entire portfolio serviced by the business. Securitized loans continue to be serviced by the business and are subject to the same underwriting standards and ongoing monitoring as held loans. In addition, excess servicing income is exposed to similar credit risk and repricing of interest rates as held loans. *Global Card Services* managed income statement line items differ from a held basis as follows:

- Managed net interest income includes *Global Card Services* net interest income on held loans and interest income on the securitized loans less the internal funds transfer pricing allocation related to securitized loans.
- Managed noninterest income includes *Global Card Services* noninterest income on a held basis less the reclassification of certain components of card income (e.g., excess servicing income) to record securitized net interest income and provision for credit losses. Noninterest income, both on a held and managed basis, also includes the impact of adjustments to the interest-only strips that are recorded in card income as management continues to manage this impact within *Global Card Services*.
- Provision for credit losses represents the provision for credit losses on held loans combined with realized credit losses associated with the securitized loan portfolio.

### Home Loans & Insurance

*Home Loans & Insurance* provides an extensive line of consumer real estate products and services to customers nationwide. *Home Loans & Insurance* products include fixed and adjustable rate first-lien mortgage loans for home purchase and refinancing needs, reverse mortgages, home equity lines of credit and home equity loans. First mortgage products are either sold into the secondary mortgage market to investors, while retaining MSRs and the Bank of America customer relationships, or are held on the Corporation's balance sheet in *All Other* for ALM purposes. *Home Loans & Insurance* is not impacted by the Corporation's mortgage production retention decisions as *Home Loans & Insurance* is compensated for the decision on a management accounting basis with a corresponding offset recorded in *All Other*. In addition, *Home Loans & Insurance* offers property, casualty, life, disability and credit insurance. *Home Loans & Insurance* also includes the impact of migrating customers and their related loan balances between *GWIM* and *Home Loans &*



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*Insurance.* As of the date of migration, the associated net interest income and noninterest expense are recorded in the segment to which loans were transferred.

### **Global Banking**

*Global Banking* provides a wide range of lending-related products and services, integrated working capital management, treasury solutions and investment banking services to clients worldwide. Lending products and services include commercial loans and commitment facilities, real estate lending, leasing, trade finance, short-term credit facilities, asset-based lending and indirect consumer loans. Capital management and treasury solutions include treasury management, foreign exchange and short-term investing options. Investment banking services provide the Corporation's commercial and corporate issuer clients with debt and equity underwriting and distribution capabilities as well as merger-related and other advisory services. *Global Banking* also includes the results of economic hedging of the credit risk to certain exposures utilizing various risk mitigation tools. Product specialists within *Global Markets* work closely with *Global Banking* on the underwriting and distribution of debt and equity securities and certain other products. In order to reflect the efforts of *Global Markets* and *Global Banking* in servicing the Corporation's clients with the best product capabilities, the Corporation allocates revenue and expenses to the two segments based on relative contribution.

### **Global Markets**

*Global Markets* provides financial products, advisory services, financing, securities clearing, settlement and custody services globally to institutional investor clients in support of their investing and trading activities. *Global Markets* also works with commercial and corporate issuer clients to provide debt and equity underwriting and distribution capabilities and risk management products using interest rate, equity, credit, currency and commodity derivatives, foreign exchange, fixed income and mortgage-related products. The business may take positions in these products and participate in market-making activities dealing in government securities, equity and equity-linked securities, high-grade and high-yield corporate debt securities, commercial paper, MBS and ABS. Product specialists within *Global Markets* work closely with *Global Banking* on the underwriting and distribution of debt and equity securities and certain other products. In order to reflect the efforts of *Global Markets* and *Global Banking* in servicing the Corporation's clients with the best product capabilities, the Corporation allocates revenue and expenses to the two segments based on relative contribution.

### **Global Wealth & Investment Management**

*GWIM* offers investment and brokerage services, estate management, financial planning services, fiduciary management, credit and banking expertise, and diversified asset management products to institutional clients, as well as affluent and high net-worth individuals. In addition, *GWIM* includes the results of Retirement and Philanthropic Services, the Corporation's approximately 34 percent economic ownership of BlackRock, and other miscellaneous items. *GWIM* also reflects the impact of migrating customers, and their related deposit and loan balances, between *GWIM* and *Deposits* and *GWIM* and *Home Loans & Insurance*. As of the date of migration, the associated net interest income, noninterest income and noninterest expense are recorded in the segment to which deposits and loans were transferred.

### **All Other**

*All Other* consists of equity investment activities including Global Principal Investments, corporate investments and strategic investments, the residential mortgage portfolio associated with ALM activities, the residual impact of the cost allocation processes, merger and restructuring charges, and the results of certain businesses that are expected to be or have been sold or are in the process of being liquidated. *All Other* also includes certain amounts associated with ALM activities, foreign exchange rate fluctuations related to revaluation of foreign currency-denominated debt issuances, certain gains (losses) on sales of whole mortgage loans, gains (losses) on sales of debt securities and a securitization offset which removes the securitization impact of sold loans in *Global Card Services* in order to present the consolidated results of the Corporation on a GAAP basis (i.e., held basis). Effective January 1, 2009, as part of the Merrill Lynch acquisition, *All Other* includes the results of First Republic Bank and fair value adjustments related to certain Merrill Lynch structured notes.

### **Basis of Presentation**

Total revenue, net of interest expense, includes net interest income on a FTE basis and noninterest income. The adjustment of net interest income to a FTE basis results in a corresponding increase in income tax expense. The segment results also reflect certain revenue and expense methodologies that are utilized to determine net income. The net interest income of the businesses includes the results of a funds transfer pricing process that matches assets and liabilities with similar interest rate sensitivity and maturity characteristics. Net interest income of the business segments also includes an allocation of net interest income generated by the Corporation's ALM activities.

The management accounting and reporting process derives segment and business results by utilizing allocation methodologies for revenue and expense. The net income derived for the businesses is dependent upon revenue and cost allocations using an activity-based costing model, funds transfer pricing, and other methodologies and assumptions management believes are appropriate to reflect the results of the business.

The Corporation's ALM activities maintain an overall interest rate risk management strategy that incorporates the use of interest rate contracts to manage fluctuations in earnings that are caused by interest rate volatility. The Corporation's goal is to manage interest rate sensitivity so that movements in interest rates do not significantly adversely affect net interest income. The results of the business segments will fluctuate based on the performance of corporate ALM activities. ALM activities are recorded in the business segments such as external product pricing decisions, including deposit pricing strategies, the effects of the Corporation's internal funds transfer pricing process as well as the net effects of other ALM activities. Certain residual impacts of the funds transfer pricing process are retained in *All Other*.

Certain expenses not directly attributable to a specific business segment are allocated to the segments. The most significant of these expenses include data and item processing costs and certain centralized or shared functions. Data processing costs are allocated to the segments based on equipment usage. Item processing costs are allocated to the segments based on the volume of items processed for each segment. The costs of certain centralized or shared functions are allocated based on methodologies that reflect utilization.

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The following tables present total revenue, net of interest expense, on a FTE basis and net income (loss) for 2009, 2008 and 2007, and total assets at December 31, 2009 and 2008 for each business segment, as well as *All Other*.

### Business Segments

At and for the Year Ended December 31 (Dollars in millions)	Total Corporation <sup>(1)</sup>			Deposits <sup>(2)</sup>			Global Card Services <sup>(3)</sup>		
	2009	2008	2007	2009	2008	2007	2009	2008	2007
Net interest income <sup>(4)</sup>	\$ 48,410	\$ 46,554	\$36,190	\$ 7,160	\$ 10,970	\$10,215	\$ 20,264	\$ 19,589	\$16,627
Noninterest income	72,534	27,422	32,392	6,848	6,870	6,187	9,078	11,631	11,146
Total revenue, net of interest expense	120,944	73,976	68,582	14,008	17,840	16,402	29,342	31,220	27,773
Provision for credit losses <sup>(5)</sup>	48,570	26,825	8,385	380	399	227	30,081	20,164	11,678
Amortization of intangibles	1,978	1,834	1,676	238	297	294	911	1,048	1,040
Other noninterest expense	64,735	39,695	35,848	9,455	8,486	8,056	7,050	8,112	8,337
Income (loss) before income taxes	5,661	5,622	22,673	3,935	8,658	7,825	(8,700)	1,896	6,718
Income tax expense (benefit) <sup>(4)</sup>	(615)	1,614	7,691	1,429	3,146	2,751	(3,145)	662	2,457
<b>Net income (loss)</b>	<b>\$ 6,276</b>	<b>\$ 4,008</b>	<b>\$14,982</b>	<b>\$ 2,506</b>	<b>\$ 5,512</b>	<b>\$ 5,074</b>	<b>\$ (5,555)</b>	<b>\$ 1,234</b>	<b>\$ 4,261</b>
<b>Year end total assets</b>	<b>\$2,223,299</b>	<b>\$1,817,943</b>		<b>\$445,363</b>	<b>\$390,487</b>		<b>\$217,139</b>	<b>\$252,683</b>	

(Dollars in millions)	Home Loans & Insurance			Global Banking <sup>(2)</sup>			Global Markets		
	2009	2008	2007	2009	2008	2007	2009	2008	2007
Net interest income <sup>(4)</sup>	\$ 4,974	\$ 3,311	\$ 1,899	\$ 11,250	\$ 10,755	\$ 8,679	\$ 6,120	\$ 5,151	\$ 2,308
Noninterest income (loss)	11,928	5,999	1,806	11,785	6,041	6,083	14,506	(8,982)	(3,618)
Total revenue, net of interest expense	16,902	9,310	3,705	23,035	16,796	14,762	20,626	(3,831)	(1,310)
Provision for credit losses	11,244	6,287	1,015	8,835	3,130	658	400	(50)	2
Amortization of intangibles	63	39	2	187	217	182	65	2	3
Other noninterest expense	11,620	6,923	2,527	9,352	6,467	7,376	9,977	3,904	4,737
Income (loss) before income taxes	(6,025)	(3,939)	161	4,661	6,982	6,546	10,184	(7,687)	(6,052)
Income tax expense (benefit) <sup>(4)</sup>	(2,187)	(1,457)	60	1,692	2,510	2,415	3,007	(2,771)	(2,241)
<b>Net income (loss)</b>	<b>\$ (3,838)</b>	<b>\$ (2,482)</b>	<b>\$ 101</b>	<b>\$ 2,969</b>	<b>\$ 4,472</b>	<b>\$ 4,131</b>	<b>\$ 7,177</b>	<b>\$ (4,916)</b>	<b>\$ (3,811)</b>
<b>Year end total assets</b>	<b>\$ 232,706</b>	<b>\$ 205,046</b>		<b>\$398,061</b>	<b>\$394,541</b>		<b>\$538,456</b>	<b>\$306,693</b>	

(Dollars in millions)	GWIM <sup>(2)</sup>			All Other <sup>(2, 3)</sup>		
	2009	2008	2007	2009	2008	2007
Net interest income <sup>(4)</sup>	\$ 5,564	\$ 4,797	\$ 3,920	\$ (6,922)	\$ (8,019)	\$ (7,458)
Noninterest income	12,559	3,012	3,637	5,830	2,851	7,151
Total revenue, net of interest expense	18,123	7,809	7,557	(1,092)	(5,168)	(307)
Provision for credit losses <sup>(5)</sup>	1,061	664	15	(3,431)	(3,769)	(5,210)
Amortization of intangibles	512	231	150	2	-	5
Other noninterest expense	12,565	4,679	4,341	4,716	1,124	474
Income (loss) before income taxes	3,985	2,235	3,051	(2,379)	(2,523)	4,424
Income tax expense (benefit) <sup>(4)</sup>	1,446	807	1,096	(2,857)	(1,283)	1,153
<b>Net income (loss)</b>	<b>\$ 2,539</b>	<b>\$ 1,428</b>	<b>\$ 1,955</b>	<b>\$ 478</b>	<b>\$ (1,240)</b>	<b>\$ 3,271</b>
<b>Year end total assets</b>	<b>\$ 254,192</b>	<b>\$ 189,073</b>		<b>\$137,382</b>	<b>\$ 79,420</b>	

<sup>(1)</sup>There were no material intersegment revenues.

<sup>(2)</sup>Total assets include asset allocations to match liabilities (i.e., deposits).

<sup>(3)</sup>*Global Card Services* is presented on a managed basis with a corresponding offset recorded in *All Other*.

<sup>(4)</sup>FTE basis

<sup>(5)</sup>Provision for credit losses represents: For *Global Card Services* – Provision for credit losses on held loans combined with realized credit losses associated with the securitized loan portfolio and for *All Other* – Provision for credit losses combined with the *Global Card Services* securitization offset.

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*Global Card Services* is reported on a managed basis which includes a securitization impact adjustment that has the effect of presenting securitized loans in a manner similar to the way loans that have not been sold are presented. *All Other* results include a corresponding securitization offset that removes the impact of these securitized loans in order to present the consolidated results of the Corporation on a held basis. The table below reconciles *Global Card Services* and *All Other* to a held basis by reclassifying net interest income, all other income and realized credit losses associated with the securitized loans to card income.

### Global Card Services – Reconciliation

(Dollars in millions)	2009			2008			2007		
	Managed Basis <sup>(1)</sup>	Securitization Impact <sup>(2)</sup>	Held Basis	Managed Basis <sup>(1)</sup>	Securitization Impact <sup>(2)</sup>	Held Basis	Managed Basis <sup>(1)</sup>	Securitization Impact <sup>(2)</sup>	Held Basis
Net interest income <sup>(3)</sup>	\$ 20,264	\$ (9,250)	\$ 11,014	\$ 19,589	\$ (8,701)	\$ 10,888	\$ 16,627	\$ (8,027)	\$ 8,600
Noninterest income:									
Card income	8,555	(2,034)	6,521	10,033	2,250	12,283	10,170	3,356	13,526
All other income	523	(115)	408	1,598	(219)	1,379	976	(288)	688
Total noninterest income	9,078	(2,149)	6,929	11,631	2,031	13,662	11,146	3,068	14,214
Total revenue, net of interest expense	29,342	(11,399)	17,943	31,220	(6,670)	24,550	27,773	(4,959)	22,814
Provision for credit losses	30,081	(11,399)	18,682	20,164	(6,670)	13,494	11,678	(4,959)	6,719
Noninterest expense	7,961	–	7,961	9,160	–	9,160	9,377	–	9,377
Income (loss) before income taxes	(8,700)	–	(8,700)	1,896	–	1,896	6,718	–	6,718
Income tax expense (benefit) <sup>(3)</sup>	(3,145)	–	(3,145)	662	–	662	2,457	–	2,457
<b>Net income (loss)</b>	<b>\$ (5,555)</b>	<b>\$ –</b>	<b>\$ (5,555)</b>	<b>\$ 1,234</b>	<b>\$ –</b>	<b>\$ 1,234</b>	<b>\$ 4,261</b>	<b>\$ –</b>	<b>\$ 4,261</b>

### All Other – Reconciliation

(Dollars in millions)	2009			2008			2007		
	Reported Basis <sup>(1)</sup>	Securitization Offset <sup>(2)</sup>	As Adjusted	Reported Basis <sup>(1)</sup>	Securitization Offset <sup>(2)</sup>	As Adjusted	Reported Basis <sup>(1)</sup>	Securitization Offset <sup>(2)</sup>	As Adjusted
Net interest income <sup>(3)</sup>	\$ (6,922)	\$ 9,250	\$ 2,328	\$ (8,019)	\$ 8,701	\$ 682	\$ (7,458)	\$ 8,027	\$ 569
Noninterest income:									
Card income (loss)	(895)	2,034	1,139	2,164	(2,250)	(86)	2,817	(3,356)	(539)
Equity investment income	9,020	–	9,020	265	–	265	3,745	–	3,745
Gains on sales of debt securities	4,440	–	4,440	1,133	–	1,133	179	–	179
All other income (loss)	(6,735)	115	(6,620)	(711)	219	(492)	410	288	698
Total noninterest income	5,830	2,149	7,979	2,851	(2,031)	820	7,151	(3,068)	4,083
Total revenue, net of interest expense	(1,092)	11,399	10,307	(5,168)	6,670	1,502	(307)	4,959	4,652
Provision for credit losses	(3,431)	11,399	7,968	(3,769)	6,670	2,901	(5,210)	4,959	(251)
Merger and restructuring charges	2,721	–	2,721	935	–	935	410	–	410
All other noninterest expense	1,997	–	1,997	189	–	189	69	–	69
Income (loss) before income taxes	(2,379)	–	(2,379)	(2,523)	–	(2,523)	4,424	–	4,424
Income tax expense (benefit) <sup>(3)</sup>	(2,857)	–	(2,857)	(1,283)	–	(1,283)	1,153	–	1,153
<b>Net income (loss)</b>	<b>\$ 478</b>	<b>\$ –</b>	<b>\$ 478</b>	<b>\$ (1,240)</b>	<b>\$ –</b>	<b>\$ (1,240)</b>	<b>\$ 3,271</b>	<b>\$ –</b>	<b>\$ 3,271</b>

<sup>(1)</sup>Provision for credit losses represents: For *Global Card Services* – Provision for credit losses on held loans combined with realized credit losses associated with the securitized loan portfolio and for *All Other* – Provision for credit losses combined with the *Global Card Services* securitization offset.

<sup>(2)</sup>The securitization impact/offset on net interest income is on a funds transfer pricing methodology consistent with the way funding costs are allocated to the businesses.

<sup>(3)</sup>FTE basis

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The following tables present a reconciliation of the six business segments' (*Deposits, Global Card Services, Home Loans & Insurance, Global Banking, Global Markets* and *GWIM*) total revenue, net of interest expense, on a FTE basis, and net income to the Consolidated Statement of Income, and total assets to the Consolidated Balance Sheet. The adjustments presented in the tables below include consolidated income, expense and asset amounts not specifically allocated to individual business segments.

(Dollars in millions)	2009	2008	2007
Segment total revenue, net of interest expense <sup>(1)</sup>	\$122,036	\$79,144	\$68,889
Adjustments:			
ALM activities	(960)	2,605	66
Equity investment income	9,020	265	3,745
Liquidating businesses	1,300	256	1,060
FTE basis adjustment	(1,301)	(1,194)	(1,749)
Managed securitization impact to total revenue, net of interest expense	(11,399)	(6,670)	(4,959)
Other	947	(1,624)	(219)
<b>Consolidated revenue, net of interest expense</b>	<b>\$119,643</b>	<b>\$72,782</b>	<b>\$66,833</b>
Segment net income	\$ 5,798	\$ 5,248	\$11,711
Adjustments, net of taxes:			
ALM activities	(6,278)	(554)	(241)
Equity investment income	5,683	167	2,359
Liquidating businesses	445	86	613
Merger and restructuring charges	(1,714)	(630)	(258)
Other	2,342	(309)	798
<b>Consolidated net income</b>	<b>\$ 6,276</b>	<b>\$ 4,008</b>	<b>\$14,982</b>

<sup>(1)</sup>FTE basis

(Dollars in millions)	December 31	
	2009	2008
Segment total assets	\$2,085,917	\$1,738,523
Adjustments:		
ALM activities, including securities portfolio	560,063	552,796
Equity investments	34,662	31,422
Liquidating businesses	22,244	3,172
Elimination of segment excess asset allocations to match liabilities	(561,607)	(439,162)
Elimination of managed securitized loans <sup>(1)</sup>	(89,715)	(100,960)
Other	171,735	32,152
<b>Consolidated total assets</b>	<b>\$2,223,299</b>	<b>\$1,817,943</b>

<sup>(1)</sup>Represents *Global Card Services* securitized loans.

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**NOTE 24 – Parent Company Information**

The following tables present the Parent Company Only financial information:

**Condensed Statement of Income**

(Dollars in millions)	2009	2008	2007
<b>Income</b>			
Dividends from subsidiaries:			
Bank holding companies and related subsidiaries	\$ 4,100	\$ 18,178	\$20,615
Nonbank companies and related subsidiaries	27	1,026	181
Interest from subsidiaries	1,179	3,433	4,939
Other income	7,784	940	3,319
<b>Total income</b>	<b>13,090</b>	<b>23,577</b>	<b>29,054</b>
<b>Expense</b>			
Interest on borrowed funds	4,737	6,818	7,834
Noninterest expense	4,238	1,829	3,127
<b>Total expense</b>	<b>8,975</b>	<b>8,647</b>	<b>10,961</b>
<b>Income before income taxes and equity in undistributed earnings of subsidiaries</b>	<b>4,115</b>	<b>14,930</b>	<b>18,093</b>
Income tax benefit	85	1,793	1,136
Income before equity in undistributed earnings of subsidiaries	4,200	16,723	19,229
Equity in undistributed earnings (losses) of subsidiaries:			
Bank holding companies and related subsidiaries	(2,183)	(11,221)	(4,497)
Nonbank companies and related subsidiaries	4,259	(1,494)	250
<b>Total equity in undistributed earnings (losses) of subsidiaries</b>	<b>2,076</b>	<b>(12,715)</b>	<b>(4,247)</b>
<b>Net income</b>	<b>\$ 6,276</b>	<b>\$ 4,008</b>	<b>\$14,982</b>
<b>Net income (loss) applicable to common shareholders</b>	<b>\$ (2,204)</b>	<b>\$ 2,556</b>	<b>\$14,800</b>

**Condensed Balance Sheet**

(Dollars in millions)	December 31	
	2009	2008
<b>Assets</b>		
Cash held at bank subsidiaries	\$ 91,892	\$ 98,525
Debt securities	8,788	16,241
Receivables from subsidiaries:		
Bank holding companies and related subsidiaries	58,931	39,239
Nonbank companies and related subsidiaries	13,043	23,518
Investments in subsidiaries:		
Bank holding companies and related subsidiaries	206,994	172,460
Nonbank companies and related subsidiaries	47,078	20,355
Other assets	13,773	20,428
<b>Total assets</b>	<b>\$ 440,499</b>	<b>\$ 390,766</b>
<b>Liabilities and shareholders' equity</b>		
Commercial paper and other short-term borrowings	\$ 5,968	\$ 26,536
Accrued expenses and other liabilities	19,204	15,244
Payables to subsidiaries:		
Bank holding companies and related subsidiaries	363	469
Nonbank companies and related subsidiaries	632	3
Long-term debt	182,888	171,462
Shareholders' equity	231,444	177,052
<b>Total liabilities and shareholders' equity</b>	<b>\$ 440,499</b>	<b>\$ 390,766</b>

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### Condensed Statement of Cash Flows

(Dollars in millions)	2009	2008	2007
<b>Operating activities</b>			
Net income	\$ 6,276	\$ 4,008	\$ 14,982
Reconciliation of net income to net cash provided by operating activities:			
Equity in undistributed (earnings) losses of subsidiaries	(2,076)	12,715	4,247
Other operating activities, net	8,889	(598)	(276)
Net cash provided by operating activities	13,089	16,125	18,953
<b>Investing activities</b>			
Net (purchases) sales of securities	3,729	(12,142)	(839)
Net payments from (to) subsidiaries	(29,926)	2,490	(44,457)
Other investing activities, net	(17)	43	(824)
Net cash used in investing activities	(26,214)	(9,609)	(46,120)
<b>Financing activities</b>			
Net increase (decrease) in commercial paper and other short-term borrowings	(20,673)	(14,131)	8,873
Proceeds from issuance of long-term debt	30,347	28,994	38,730
Retirement of long-term debt	(20,180)	(13,178)	(12,056)
Proceeds from issuance of preferred stock	49,244	34,742	1,558
Repayment of preferred stock	(45,000)	-	-
Proceeds from issuance of common stock	13,468	10,127	1,118
Common stock repurchased	-	-	(3,790)
Cash dividends paid	(4,863)	(11,528)	(10,878)
Other financing activities, net	4,149	5,030	576
Net cash provided by financing activities	6,492	40,056	24,131
Net increase (decrease) in cash held at bank subsidiaries	(6,633)	46,572	(3,036)
Cash held at bank subsidiaries at January 1	98,525	51,953	54,989
<b>Cash held at bank subsidiaries at December 31</b>	<b>\$ 91,892</b>	<b>\$ 98,525</b>	<b>\$ 51,953</b>

### NOTE 25 – Performance by Geographical Area

Since the Corporation's operations are highly integrated, certain asset, liability, income and expense amounts must be allocated to arrive at total assets, total revenue, net of interest expense, income before income taxes and net income by geographic area. The Corporation identifies its geographic performance based on the business unit structure used to manage the capital or expense deployed in the region as applicable. This requires certain judgments related to the allocation of revenue so that revenue can be appropriately matched with the related expense or capital deployed in the region.

(Dollars in millions)	December 31		Year Ended December 31		
	Year	Total Assets <sup>(1)</sup>	Total Revenue, Net of Interest Expense <sup>(2)</sup>	Income (Loss) Before Income Taxes	Net Income (Loss)
Domestic <sup>(3)</sup>	<b>2009</b>	\$ 1,840,232	\$ 98,278	\$ (6,901)	\$ (1,025)
	2008	1,678,853	67,549	3,289	3,254
	2007	-	60,245	18,039	13,137
Asia <sup>(4)</sup>	<b>2009</b>	118,921	10,685	8,096	5,101
	2008	50,567	1,770	1,207	761
	2007	-	1,613	1,146	721
Europe, Middle East and Africa	<b>2009</b>	239,374	9,085	2,295	1,652
	2008	78,790	3,020	(456)	(252)
	2007	-	4,097	894	592
Latin America and the Caribbean	<b>2009</b>	24,772	1,595	870	548
	2008	9,733	443	388	245
	2007	-	878	845	532
Total Foreign	<b>2009</b>	383,067	21,365	11,261	7,301
	2008	139,090	5,233	1,139	754
	2007	-	6,588	2,885	1,845
<b>Total Consolidated</b>	<b>2009</b>	<b>\$ 2,223,299</b>	<b>\$ 119,643</b>	<b>\$ 4,360</b>	<b>\$ 6,276</b>
	2008	1,817,943	72,782	4,428	4,008
	2007	-	66,833	20,924	14,982

<sup>(1)</sup>Total assets include long-lived assets, which are primarily located in the U.S.

<sup>(2)</sup>There were no material intercompany revenues between geographic regions for any of the periods presented.

<sup>(3)</sup>Includes the Corporation's Canadian operations, which had total assets of \$31.1 billion and \$13.5 billion at December 31, 2009 and 2008; total revenue, net of interest expense of \$2.5 billion, \$1.2 billion and \$770 million; income before income taxes of \$723 million, \$552 million and \$292 million; and net income of \$488 million, \$404 million and \$195 million for 2009, 2008 and 2007, respectively.

<sup>(4)</sup>The year ended December 31, 2009 amount includes pre-tax gains of \$7.3 billion (\$4.7 billion net-of-tax) on the sale of common shares of the Corporation's initial investment in CCB.

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**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

There were no changes in or disagreements with accountants on accounting and financial disclosure.

**Item 9A. Controls And Procedures**

**Disclosure Controls and Procedures**

As of the end of the period covered by this report and pursuant to Rule 13a-15 of the Securities Exchange Act of 1934 (Exchange Act), Bank of America's management, including the Chief Executive Officer and Interim Chief Financial Officer, conducted an evaluation of the effectiveness and design of our disclosure controls and procedures (as that term is defined in Rule 13a-15(e) of the Exchange Act). Based upon that evaluation, Bank of America's Chief Executive Officer and Interim Chief Financial Officer concluded that Bank of America's disclosure controls and procedures were effective, as of the end of the period covered by this report, in recording, processing, summarizing and reporting information required to be disclosed, within the time periods specified in the SEC's rules and forms.

**Report of Management on Internal Control Over Financial Reporting**

The Report of Management on Internal Control over Financial Reporting is set forth on page 112 and incorporated herein by reference. The Report of Independent Registered Public Accounting Firm with respect to the Corporation's internal control over financial reporting is set forth on page 113 and incorporated herein by reference.

**Changes in Internal Control Over Financial Reporting**

There have been no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) during the quarter ended December 31, 2009, that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information**

None

## Part III

### Bank of America Corporation and Subsidiaries

#### Item 10. Directors, Executive Officers and Corporate Governance

Information included under the following captions in the Corporation's proxy statement relating to its 2010 annual meeting of stockholders (the 2010 Proxy Statement) is incorporated herein by reference:

- "Item 1: Election of Directors – The Nominees";
- "Section 16(a) Beneficial Ownership Reporting Compliance";
- "Corporate Governance – Additional Corporate Governance Information, Committee Charters and Code of Ethics";
- "Corporate Governance – Code of Ethics"; and

Additional information required by Item 10 with respect to executive officers is set forth under "Executive Officers of The Registrant" in Part I of this report. Information regarding the Corporation's directors is set forth in the 2010 Proxy Statement under the caption "Item 1: Election of Directors – The Nominees."

#### Item 11. Executive Compensation

Information included under the following captions in the 2010 Proxy Statement is incorporated herein by reference:

- "Compensation Discussion and Analysis";
- "Executive Compensation";
- "Director Compensation";
- "Compensation and Benefits Committee Report"; and
- "Compensation and Benefits Committee Interlocks and Insider Participation."

#### Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Information included under the following caption in the 2010 Proxy Statement is incorporated herein by reference:

- "Stock Ownership."

The following table presents information on equity compensation plans at December 31, 2009:

Plan Category <sup>(1)(2)</sup>	Number of Shares to be Issued Under Outstanding Options and Rights <sup>(3)</sup>	Weighted Average Exercise Price of Outstanding Options <sup>(4)</sup>	Number of Shares Remaining for Future Issuance Under Equity Compensation Plans
Plans approved by the Corporation's shareholders	286,824,064	\$40.53	283,604,110 <sup>(5)</sup>
Plans not approved by the Corporation's shareholders <sup>(6)</sup>	126,222,932	\$66.99	49,092,032 <sup>(7)</sup>
<b>Total</b>	<b>413,046,996</b>	<b>\$48.11</b>	<b>332,696,142</b>

(1) This table does not include outstanding options to purchase 14,078,269 shares of the Corporation's common stock that were assumed by the Corporation in connection with prior acquisitions, under whose plans the options were originally granted. The weighted average option price of these assumed options was \$73.55 at December 31, 2009. Also, at December 31, 2009 there were 324,681 vested deferred restricted stock units associated with these plans. No additional awards were granted under these plans following the respective dates of acquisition.

(2) This table does not include outstanding options to purchase 13,726,608 shares of the Corporation's common stock that were assumed by the Corporation in connection with the Merrill Lynch acquisition, which were originally issued under certain Merrill Lynch plans. The weighted average option price of these assumed options was \$57.50 at December 31, 2009. Also, at December 31, 2009 there were 27,242,816 outstanding restricted stock units and 1,980,847 vested deferred restricted stock units and stock option gain deferrals associated with such plans. These Merrill Lynch plans were frozen at the time of the acquisition and no additional awards may be granted under these plans. However, as previously approved by the Corporation's shareholders, if any of the outstanding awards under these frozen plans subsequently are cancelled, forfeited or settled in cash, the shares relating to such awards thereafter will be available for future awards issued under the Corporation's Key Associate Stock Plan (KASP).

(3) Includes 89,089,935 outstanding restricted stock units and 834,728 vested deferred restricted stock units under plans approved by the Corporation's shareholders and 47,204,462 outstanding restricted stock units under plans not approved by the Corporation's shareholders.

(4) Does not reflect restricted stock units included in the first column, which do not have an exercise price.

(5) Includes 282,870,925 shares of common stock available for future issuance under the KASP (including 9,479,676 shares originally subject to awards outstanding under frozen Merrill Lynch plans at the time of the acquisition which subsequently have been cancelled, forfeited or settled in cash and become available for issuance under the KASP, as described in note (2) above) and 733,185 shares of common stock which are available for future issuance under the Corporation's Directors' Stock Plan.

(6) In connection with the Merrill Lynch acquisition, the Corporation assumed and has continued to issue awards in accordance with applicable NYSE listing standards under the following plans, which were not approved by the Corporation's shareholders: the Merrill Lynch Employee Stock Compensation Plan (ESCP) and the Merrill Lynch Employee Stock Purchase Plan (ESPP), both of which were approved by Merrill Lynch's shareholders prior to the acquisition. The material features of these plans are described below under the heading "Description of Plans Not Approved by the Corporation's Shareholders."

(7) This amount includes 36,661,929 shares of common stock available for future issuance under the ESCP and 12,430,103 shares of common stock available for future issuance under the ESPP.

#### Description of Plans Not Approved by the Corporation's Shareholders

**Merrill Lynch Employee Stock Compensation Plan.** The ESCP covers associates who were salaried key employees of Merrill Lynch or its subsidiaries immediately prior to the effective date of the Merrill Lynch acquisition, other than executive officers. Under the ESCP, the Corporation may award restricted shares, restricted units, incentive stock options, nonqualified stock options and stock appreciation rights. Awards of restricted shares and restricted units are subject to a vesting schedule

specified in the grant documentation. Restricted shares and restricted units under the ESCP may generally be cancelled prior to the vesting date in the event of (i) violation of covenants specified in the grant documentation (including, but not limited to, non-competition, non-solicitation, nondisparagement and confidentiality covenants) or (ii) termination of employment prior to the end of the vesting period (except in certain limited circumstances, such as death, disability and retirement). Options have an exercise price equal to the fair market value of the stock on the date of grant. Options granted under the ESCP expire



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not more than 10 years from the date of grant, and the applicable grant documentation specifies the extent to which options may be exercised during their respective terms, including in the event of an associate's death, disability or termination of employment. Shares that are cancelled, forfeited or settled in cash from an additional frozen Merrill Lynch plan also will become available for grant under the ESCP.

*Merrill Lynch Employee Stock Purchase Plan.* The purpose of the ESPP is to give employees of Merrill Lynch and its eligible subsidiaries an opportunity to purchase the Corporation's common stock through payroll deductions (an employee can elect either payroll deductions of 1% to 10% of current compensation or an annual dollar amount equal to a maximum of 10% of current eligible compensation). Shares are purchased quarterly at 95% of the fair market value (average of the highest and lowest share prices) on the date of the purchase and the maximum annual contribution is \$23,750. An associate is eligible to participate if he or she was employed by Merrill Lynch or any participating subsidiary for at least one full year by the start of the new plan year.

For additional information on our equity compensation plans see *Note 18 – Stock-Based Compensation Plans* to the Consolidated Financial Statements beginning on page 182 which is incorporated herein by reference.

### **Item 13. Certain Relationships and Related Transactions, and Director Independence**

Information included under the following captions in the 2010 Proxy Statement is incorporated herein by reference:

- "Certain Transactions";
- "Review of Related Person Transactions"; and
- "Corporate Governance – Director Independence."

### **Item 14. Principal Accounting Fees and Services**

Information included under the following caption in the 2010 Proxy Statement is incorporated herein by reference:

- "Item 2: Ratification of the Registered Independent Public Accounting Firm for 2010 – Fees to Registered Independent Public Accounting Firm for 2009 and 2008" and "– Pre-approval Policies and Procedures."

## Part IV

### Bank of America Corporation and Subsidiaries

#### Item 15. Exhibits, Financial Statement Schedules

- The following documents are filed as part of this report:
- (1) Financial Statements:
    - Report of Independent Registered Public Accounting Firm
    - Consolidated Statement of Income for the years ended December 31, 2009, 2008 and 2007
    - Consolidated Balance Sheet at December 31, 2009 and 2008
    - Consolidated Statement of Changes in Shareholders' Equity for the years ended December 31, 2008, 2007 and 2006
    - Consolidated Statement of Cash Flows for the years ended December 31, 2009, 2008 and 2007
    - Notes to Consolidated Financial Statements
  - (2) Schedules:
    - None
  - (3) The exhibits filed as part of this report and exhibits incorporated herein by reference to other documents are listed in the Index to Exhibits to this Annual Report on Form 10-K (pages E-1 through E-5, including executive compensation plans and arrangements which are listed under Exhibit Nos. 10(a) through 10(ddd)).

With the exception of the information expressly incorporated herein by reference, the 2010 Proxy Statement is not to be deemed filed as part of this Annual Report on Form 10-K.

## Signatures

Pursuant to the requirements of Section 13 of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: February 26, 2010

### Bank of America Corporation

By: \*/s/ Brian T. Moynihan  
Brian T. Moynihan  
Chief Executive Officer and President

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>*/s/ Brian T. Moynihan</u> Brian T. Moynihan	Chief Executive Officer, President and Director (Principal Executive Officer)	February 26, 2010
<u>*/s/ Neil Cotty</u> Neil Cotty	Interim Chief Financial Officer and Chief Accounting Officer (Principal Financial Officer and Principal Accounting Officer)	February 26, 2010
<u>*/s/ Susan S. Bies</u> Susan S. Bies	Director	February 26, 2010
<u>*/s/ William P. Boardman</u> William P. Boardman	Director	February 26, 2010
<u>*/s/ Frank P. Bramble, Sr.</u> Frank P. Bramble, Sr.	Director	February 26, 2010
<u>*/s/ Virgjis W. Colbert</u> Virgjis W. Colbert	Director	February 26, 2010
<u>*/s/ Charles K. Gifford</u> Charles K. Gifford	Director	February 26, 2010
<u>*/s/ Charles O. Holliday, Jr.</u> Charles O. Holliday, Jr.	Director	February 26, 2010
<u>*/s/ D. Paul Jones</u> D. Paul Jones	Director	February 26, 2010

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<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>*/s/ Monica C. Lozano</u> Monica C. Lozano	Director	February 26, 2010
<u>*/s/ Walter E. Massey</u> Walter E. Massey	Director	February 26, 2010
<u>*/s/ Thomas J. May</u> Thomas J. May	Director	February 26, 2010
<u>*/s/ Donald E. Powell</u> Donald E. Powell	Director	February 26, 2010
<u>*/s/ Charles O. Rossotti</u> Charles O. Rossotti	Director	February 26, 2010
<u>*/s/ Thomas M. Ryan</u> Thomas M. Ryan	Director	February 26, 2010
<u>*/s/ Robert W. Scully</u> Robert W. Scully	Director	February 26, 2010
*By: <u>/s/ Teresa M. Brenner</u> Teresa M. Brenner Attorney-in-Fact		

## Index to Exhibits

<u>Exhibit No.</u>	<u>Description</u>
2(a)	Agreement and Plan of Merger dated as of September 15, 2008 by and between Merrill Lynch & Co., Inc. and the registrant, incorporated by reference to Exhibit 2.1 of registrant's Current Report on Form 8-K (File No. 1-6523) filed September 18, 2008.
3(a)	Amended and Restated Certificate of Incorporation of registrant, as in effect on the date hereof, filed herewith.
(b)	Amended and Restated Bylaws of registrant, as in effect on the date hereof, incorporated by reference to Exhibit 3.2 of registrant's Current Report on Form 8-K (File No. 1-6523) filed December 15, 2008.
4(a)	Indenture dated as of January 1, 1995 between registrant (successor to NationsBank Corporation) and BankAmerica National Trust Company incorporated by reference to Exhibit 4.1 of registrant's Registration Statement on Form S-3 (Registration No. 33-57533); First Supplemental Indenture thereto dated as of September 18, 1998, between registrant and U.S. Bank Trust National Association (successor to BankAmerica National Trust Company), incorporated by reference to Exhibit 4.3 of registrant's Current Report on Form 8-K (File No. 1-6523) filed November 18, 1998; Second Supplemental Indenture thereto dated as of May 7, 2001 between registrant, U.S. Bank Trust National Association, as Prior Trustee, and The Bank of New York, as Successor Trustee, incorporated by reference to Exhibit 4.4 of registrant's Current Report on Form 8-K (File No. 1-6523) filed June 14, 2001; Third Supplemental Indenture thereto dated as of July 28, 2004, between registrant and The Bank of New York, incorporated by reference to Exhibit 4.2 of registrant's Current Report on Form 8-K (File No. 1-6523) filed August 27, 2004; Fourth Supplemental Indenture thereto dated as of April 28, 2006 between the registrant and The Bank of New York, incorporated by reference to Exhibit 4.6 of registrant's Registration Statement on Form S-3 (Registration No. 333-133852); and Fifth Supplemental Indenture dated as of December 1, 2008 between the registrant and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York), incorporated by reference to Exhibit 4.1 of registrant's Current Report on Form 8-K (File No. 1-6523) filed December 5, 2008.
(b)	Form of Senior Registered Note, incorporated by reference to Exhibit 4.7 of registrant's Registration Statement on Form S-3 (Registration No. 333-133852).
(c)	Form of Global Senior Medium-Term Note, Series L, incorporated by reference to Exhibit 4.12 of registrant's Registration Statement on Form S-3 (Registration No. 333-158663).
(d)	Indenture dated as of January 1, 1995 between registrant (successor to NationsBank Corporation) and The Bank of New York, incorporated by reference to Exhibit 4.5 of registrant's Registration Statement on Form S-3 (Registration No. 33-57533); First Supplemental Indenture thereto dated as of August 28, 1998, between registrant and The Bank of New York, incorporated by reference to Exhibit 4.8 of registrant's Current Report on Form 8-K (File No. 1-6523) filed November 18, 1998; and Second Supplemental Indenture thereto dated as of January 25, 2007, between registrant and The Bank of New York Trust Company, N.A. (successor to The Bank of New York), incorporated by reference to Exhibit 4.3 of registrant's Registration Statement on Form S-4 (Registration No. 333-141361).
(e)	Form of Subordinated Registered Note, incorporated by reference to Exhibit 4.10 of registrant's Registration Statement on Form S-3 (Registration No. 333-133852).
(f)	Form of Global Subordinated Medium-Term Note, Series L, incorporated by reference to Exhibit 4.17 of registrant's Registration Statement on Form S-3 (Registration No. 333-158663).
(g)	Agency Agreement dated as of July 22, 2009, among the registrant, The Bank of New York Mellon, Bank of America, N.A., London Agent, Merrill Lynch Limited and other agents, incorporated by reference to Exhibit 4.1 of the registrant's Current Report on Form 8-K (File No. 1-6523) filed July 28, 2009.
(h)	Amended and Restated Senior Indenture dated as of July 1, 2001 between registrant and The Bank of New York, pursuant to which registrant issued its Senior InterNotes <sup>SM</sup> , incorporated by reference to Exhibit 4.1 of registrant's Registration Statement on Form S-3 (Registration No. 333-65750).
(i)	Amended and Restated Subordinated Indenture dated as of July 1, 2001 between registrant and The Bank of New York, pursuant to which registrant issued its Subordinated InterNotes <sup>SM</sup> , incorporated by reference to Exhibit 4.2 of registrant's Registration Statement on Form S-3 (Registration No. 333-65750).
(j)	Restated Indenture dated as of November 1, 2001 between registrant and The Bank of New York, incorporated by reference to Exhibit 4.10 of registrant's Registration Statement on Form S-3 (Registration No. 333-70984).
(k)	First Supplemental Indenture dated as of December 14, 2001 to the Restated Indenture dated as of November 1, 2001 between registrant and The Bank of New York pursuant to which registrant issued its 7% Junior Subordinated Notes due 2031, incorporated by reference to Exhibit 4.3 of registrant's Current Report on Form 8-K (File No. 1-6523) filed December 14, 2001.
(l)	Second Supplemental Indenture dated as of January 31, 2002 to the Restated Indenture dated as of November 1, 2001 between registrant and The Bank of New York pursuant to which registrant issued its 7% Junior Subordinated Notes due 2032, incorporated by reference to Exhibit 4.3 of registrant's Current Report on Form 8-K (File No. 1-6523) filed January 31, 2002.
(m)	Third Supplemental Indenture dated as of August 9, 2002 to the Restated Indenture dated as of November 1, 2001 between registrant and The Bank of New York pursuant to which registrant issued its 7% Junior Subordinated Notes due 2032, incorporated by reference to Exhibit 4.3 of registrant's Current Report on Form 8-K (File No. 1-6523) filed August 9, 2002.
(n)	Fourth Supplemental Indenture dated as of April 30, 2003 to the Restated Indenture dated as of November 1, 2001 between registrant and The Bank of New York pursuant to which registrant issued its 5 7/8% Junior Subordinated Notes due 2033, incorporated by reference to Exhibit 4.3 of registrant's Current Report on Form 8-K (File No. 1-6523) filed April 30, 2003.

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<u>Exhibit No.</u>	<u>Description</u>
(c)	Fifth Supplemental Indenture dated as of November 3, 2004 to the Restated Indenture dated as of November 1, 2001 between registrant and The Bank of New York pursuant to which registrant issued its 6% Junior Subordinated Notes due 2034, incorporated by reference to Exhibit 4.3 of registrant's Current Report on Form 8-K (File No. 1-6523) filed November 3, 2004.
(p)	Sixth Supplemental Indenture dated as of March 8, 2005 to the Restated Indenture dated as of November 1, 2001 between the registrant and The Bank of New York pursuant to which registrant issued its 5 <sup>5</sup> / <sub>8</sub> % Junior Subordinated Notes due 2035, incorporated by reference to Exhibit 4.3 of registrant's Current Report on Form 8-K (File No. 1-6523) filed March 9, 2005.
(q)	Seventh Supplemental Indenture dated as of August 10, 2005 to the Restated Indenture dated as of November 1, 2001 between the registrant and The Bank of New York pursuant to which registrant issued its 5 <sup>1</sup> / <sub>4</sub> % Junior Subordinated Notes due 2035, incorporated by reference to Exhibit 4.3 of registrant's Current Report on Form 8-K (File No. 1-6523) filed August 11, 2005.
(r)	Eighth Supplemental Indenture dated as of August 25, 2005 to the Restated Indenture dated as of November 1, 2001 between the registrant and The Bank of New York pursuant to which registrant issued its 6% Junior Subordinated Notes due 2035, incorporated by reference to Exhibit 4.3 of the Current Report on Form 8-K (File No. 1-6523) filed August 26, 2005.
(s)	Tenth Supplemental Indenture dated as of March 28, 2006 to the Restated Indenture dated as of November 1, 2001 between the registrant and The Bank of New York pursuant to which registrant issued its 6 <sup>1</sup> / <sub>4</sub> % Junior Subordinated Notes due 2055, incorporated by reference to Exhibit 4(bb) of registrant's 2006 Annual Report on Form 10-K (File No. 1-6523) (the "2006 10-K").
(t)	Eleventh Supplemental Indenture dated as of May 23, 2006 to the Restated Indenture dated as of November 1, 2001 between the registrant and The Bank of New York pursuant to which registrant issued its 6 <sup>5</sup> / <sub>8</sub> % Junior Subordinated Notes due 2036, incorporated by reference to Exhibit 4(cc) of the 2006 10-K.
(u)	Twelfth Supplemental Indenture dated as of August 2, 2006 to the Restated Indenture dated as of November 1, 2001 between the registrant and The Bank of New York pursuant to which registrant issued its 6 <sup>7</sup> / <sub>8</sub> % Junior Subordinated Notes due 2055, incorporated by reference to Exhibit 4(dd) of the 2006 10-K.
(v)	Thirteenth Supplemental Indenture dated as of February 16, 2007 to the Restated Indenture dated as of November 1, 2001 between the registrant and The Bank of New York Trust Company, N.A. (successor to The Bank of New York) pursuant to which registrant issued its Remarketable Floating Rate Junior Subordinated Notes due 2043, incorporated by reference to Exhibit 4.6 of registrant's Current Report on Form 8-K (File No. 1-6523) filed February 16, 2007.
(w)	Fourteenth Supplemental Indenture dated as of February 16, 2007 to the Restated Indenture dated as of November 1, 2001 between the registrant and The Bank of New York Trust Company, N.A. (successor to The Bank of New York) pursuant to which registrant issued its Remarketable Fixed Rate Junior Subordinated Notes due 2043, incorporated by reference to Exhibit 4.7 of registrant's Current Report on Form 8-K (File No. 1-6523) filed February 16, 2007.
(x)	Fifteenth Supplemental Indenture dated as of May 31, 2007 to the Restated Indenture dated as of November 1, 2001 between the registrant and The Bank of New York Trust Company, N.A. (successor to The Bank of New York) pursuant to which registrant issued its Floating Rate Junior Subordinated Notes due 2056, incorporated by reference to Exhibit 4.4 of registrant's Current Report on Form 8-K (File No. 1-6523) filed June 1, 2007.
(y)	Form of Supplemental Indenture to be used in connection with the issuance of registrant's junior subordinated notes, including form of Junior Subordinated Note, incorporated by reference to Exhibit 4.44 of registrant's Registration Statement on Form S-3 (Registration No. 333-133852).
(z)	Form of Guarantee with respect to capital securities to be issued by various capital trusts, incorporated by reference to Exhibit 4.47 of registrant's Registration Statement on Form S-3 (Registration No. 333-133852).
(aa)	Agreement of Appointment and Acceptance dated as of December 29, 2006 between registrant and The Bank of New York Trust Company, N.A., incorporated by reference to Exhibit 4(aaa) of the 2006 10-K.
(bb)	Global Agency Agreement dated as of July 25, 2007 among Bank of America, N.A., Deutsche Bank Trust Company Americas, Deutsche Bank AG, London Branch, and Deutsche Bank Luxembourg S.A, incorporated by reference to Exhibit 4(x) of registrant's 2008 Annual Report on Form 10-K (File No. 1-6523) (the "2008 10-K").
(cc)	Supplement to Global Agency Agreement dated as of December 19, 2008 among Bank of America, N.A., Deutsche Bank Trust Company Americas, Deutsche Bank AG, London Branch and Deutsche Bank Luxembourg S.A, incorporated by reference to Exhibit 4(y) of the 2008 10-K. The registrant has other long-term debt agreements, but these are omitted pursuant Item 601(6)(4)(iii) of Regulation S-K. Copies of these agreements will be furnished to the Commission on request.
10(a)	NationsBank Corporation and Designated Subsidiaries Supplemental Executive Retirement Plan, incorporated by reference to Exhibit 10(j) of registrant's 1994 Annual Report on Form 10-K (File No. 1-6523) (the "1994 10-K"); Amendment thereto dated as of June 28, 1989, incorporated by reference to Exhibit 10(g) of registrant's 1989 Annual Report on Form 10-K (File No. 1-6523) (the "1989 10-K"); Amendment thereto dated as of June 27, 1990, incorporated by reference to Exhibit 10(g) of registrant's 1990 Annual Report on Form 10-K (File No. 1-6523) (the "1990 10-K"); Amendment thereto dated as of July 21, 1991, incorporated by reference to Exhibit 10(bb) of registrant's 1991 Annual Report on Form 10-K (File No. 1-6523) (the "1991 10-K"); Amendments thereto dated as of December 3, 1992 and December 15, 1992, incorporated by reference to Exhibit 10(l) of registrant's 1992 Annual Report on Form 10-K (File No. 1-6523) (the "1992 10-K"); Amendment thereto dated as of September 28, 1994, incorporated by reference to Exhibit 10(j) of registrant's 1994 10-K;

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<u>Exhibit No.</u>	<u>Description</u>
	Amendments thereto dated March 27, 1996 and June 25, 1997, incorporated by reference to Exhibit 10(c) of registrant's 1997 Annual Report on Form 10-K; Amendments thereto dated April 10, 1998, June 24, 1998 and October 1, 1998, incorporated by reference to Exhibit 10(b) of registrant's 1998 Annual Report on Form 10-K (File No. 1-6523) (the "1998 10-K"); Amendment thereto dated December 14, 1999, incorporated by reference to Exhibit 10(b) of registrant's 1999 Annual Report on Form 10-K; Amendment thereto dated as of March 28, 2001, incorporated by reference to Exhibit 10(b) of registrant's 2001 Annual Report on Form 10-K (File No. 1-6523) (the "2001 10-K"); and Amendment thereto dated December 10, 2002, incorporated by reference to Exhibit 10(b) of registrant's 2002 Annual Report on Form 10-K (File No. 1-6523) (the "2002 10-K").*
(b)	NationsBank Corporation and Designated Subsidiaries Deferred Compensation Plan for Key Employees, incorporated by reference to Exhibit 10(k) of the 1994 10-K; Amendment thereto dated as of June 28, 1989, incorporated by reference to Exhibit 10(h) of the 1989 10-K; Amendment thereto dated as of June 27, 1990, incorporated by reference to Exhibit 10(h) of the 1990 10-K; Amendment thereto dated as of July 21, 1991, incorporated by reference to Exhibit 10(bb) of the 1991 10-K; Amendment thereto dated as of December 3, 1992, incorporated by reference to Exhibit 10(m) of the 1992 10-K; and Amendments thereto dated April 10, 1998 and October 1, 1998, incorporated by reference to Exhibit 10(b) of the 1998 10-K.*
(c)	Bank of America Pension Restoration Plan, as amended and restated effective January 1, 2009, incorporated by reference to Exhibit 10(c) of registrant's 2008 10-K, and Amendment thereto dated December 18, 2009, filed herewith.*
(d)	NationsBank Corporation Benefit Security Trust dated as of June 27, 1990, incorporated by reference to Exhibit 10(t) of the 1990 10-K; First Supplement thereto dated as of November 30, 1992, incorporated by reference to Exhibit 10(v) of the 1992 10-K; and Trustee Removal/Appointment Agreement dated as of December 19, 1995, incorporated by reference to Exhibit 10(o) of registrant's 1995 Annual Report on Form 10-K (File No. 1-6523).*
(e)	Bank of America 401(k) Restoration Plan, as amended and restated effective January 1, 2009, incorporated by reference to Exhibit 10(a) of registrant's Quarterly Report on Form 10-Q (File No. 1-6523) for the quarter ended September 30, 2009, and Amendment thereto dated December 18, 2009, filed herewith.*
(f)	Bank of America Executive Incentive Compensation Plan, as amended and restated effective December 10, 2002, incorporated by reference to Exhibit 10(g) of the 2002 10-K.*
(g)	Bank of America Director Deferral Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10(g) of the registrant's 2006 10-K.*
(h)	Bank of America Corporation Directors' Stock Plan as amended and restated effective April 26, 2006, incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed December 14, 2005; form of Restricted Stock Award Agreement incorporated by reference to Exhibit 10(h) of registrant's 2004 Annual Report on Form 10-K (File No. 1-6523) (the "2004 10-K"); and Form of Directors Stock Plan Restricted Stock Award Agreement for Nonemployee Chairman, incorporated by reference to Exhibit 10(b) of registrant's Quarterly Report on Form 10-Q (File No. 1-6523) for the quarter ended September 30, 2009.
(i)	Bank of America Corporation 2003 Key Associate Stock Plan, effective January 1, 2003, as amended and restated effective April 1, 2004, incorporated by reference to Exhibit 10(f) of registrant's Registration Statement on Form S-4 (File No. 333-110924); Amendment thereto dated March 13, 2006, form of Restricted Stock Units Award Agreement and form of Stock Option Award Agreement, incorporated by reference to Exhibit 10(i) of the registrant's 2007 Annual Report on Form 10-K (File No. 1-6523); Amendment thereto dated December 17, 2008, incorporated by reference to Appendix F of Part I to the document included in registrant's Registration Statement on Form S-4/A (Registration No. 333-153771); and 2008 form of Restricted Stock Units Award Agreement for non-executives and 2008 form of Stock Option Award Agreement for non-executives, filed herewith.*
(j)	Split Dollar Life Insurance Agreement dated as of September 28, 1998 between registrant and J. Steele Alphin, as Trustee under that certain Irrevocable Trust Agreement dated June 23, 1998, by and between Kenneth D. Lewis, as Grantor, and J. Steele Alphin, as Trustee, incorporated by reference to Exhibit 10(ee) of the 1998 10-K; and Amendment thereto dated January 24, 2002, incorporated by reference to Exhibit 10(p) of the 2001 10-K.*
(k)	Amendment to various plans in connection with FleetBoston Financial Corporation merger, incorporated by reference to Exhibit 10(v) of registrant's 2003 Annual Report on Form 10-K.*
(l)	FleetBoston Supplemental Executive Retirement Plan, as amended by Amendment One thereto effective January 1, 1997, Amendment Two thereto effective October 15, 1997, Amendment Three thereto effective July 1, 1998, Amendment Four thereto effective August 15, 1999, Amendment Five thereto effective January 1, 2000, Amendment Six thereto effective October 10, 2001, Amendment Seven thereto effective February 19, 2002, Amendment Eight thereto effective October 15, 2002, Amendment Nine thereto effective January 1, 2003, Amendment Ten thereto effective October 21, 2003, and Amendment Eleven thereto effective December 31, 2004, incorporated by reference to Exhibit 10(r) of the 2004 10-K.*
(m)	FleetBoston Amended and Restated 1992 Stock Option and Restricted Stock Plan, incorporated by reference to Exhibit 10(s) of the 2004 10-K.*
(n)	FleetBoston Executive Deferred Compensation Plan No. 2, as amended by Amendment One thereto effective February 1, 1999, Amendment Two thereto effective January 1, 2000, Amendment Three thereto effective January 1, 2002, Amendment Four thereto effective October 15, 2002, Amendment Five thereto effective January 1, 2003, and Amendment Six thereto effective December 16, 2003, incorporated by reference to Exhibit 10(u) of the 2004 10-K.*
(o)	FleetBoston Executive Supplemental Plan, as amended by Amendment One thereto effective January 1, 2000, Amendment Two thereto effective January 1, 2002, Amendment Three thereto effective January 1, 2003, Amendment Four thereto effective January 1, 2003, and Amendment Five thereto effective December 31, 2004, incorporated by reference to Exhibit 10(v) of the 2004 10-K.*
(p)	Retirement Income Assurance Plan for Legacy Fleet, as amended and restated effective January 1, 2009, filed herewith.*

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<b>Exhibit No.</b>	<b>Description</b>
(q)	Trust Agreement for the FleetBoston Executive Deferred Compensation Plans No. 1 and 2, incorporated by reference to Exhibit 10(x) of the 2004 10-K.*
(r)	Trust Agreement for the FleetBoston Executive Supplemental Plan, incorporated by reference to Exhibit 10(y) of the 2004 10-K.*
(s)	Trust Agreement for the FleetBoston Retirement Income Assurance Plan and the FleetBoston Supplemental Executive Retirement Plan, incorporated by reference to Exhibit 10(z) of the 2004 10-K.*
(t)	FleetBoston Directors Deferred Compensation and Stock Unit Plan, as amended by an amendment thereto effective as of July 1, 2000, a Second Amendment thereto effective as of January 1, 2003, a Third Amendment thereto dated April 14, 2003, and a Fourth Amendment thereto effective January 1, 2004, incorporated by reference to Exhibit 10(aa) of the 2004 10-K.*
(u)	FleetBoston 1996 Long-Term Incentive Plan, incorporated by reference to Exhibit 10(bb) of the 2004 10-K.*
(v)	BankBoston Corporation and its Subsidiaries Deferred Compensation Plan, as amended by a First Amendment thereto, a Second Amendment thereto, a Third Amendment thereto, an Instrument thereto (providing for the cessation of accruals effective December 31, 2000) and an Amendment thereto dated December 24, 2001, incorporated by reference to Exhibit 10(cc) of the 2004 10-K.*
(w)	BankBoston, N.A. Bonus Supplemental Employee Retirement Plan, as amended by a First Amendment, a Second Amendment, a Third Amendment and a Fourth Amendment thereto, incorporated by reference to Exhibit 10(dd) of the 2004 10-K.*
(x)	Description of BankBoston Supplemental Life Insurance Plan, incorporated by reference to Exhibit 10(ee) of the 2004 10-K.*
(y)	BankBoston, N.A. Excess Benefit Supplemental Employee Retirement Plan, as amended by a First Amendment, a Second Amendment, a Third Amendment thereto (assumed by FleetBoston on October 1, 1999) and an Instrument thereto, incorporated by reference to Exhibit 10(ff) of the 2004 10-K.*
(z)	Description of BankBoston Supplemental Long-Term Disability Plan, incorporated by reference to Exhibit 10(gg) of the 2004 10-K.*
(aa)	BankBoston Director Stock Award Plan, incorporated by reference to Exhibit 10(hh) of the 2004 10-K.*
(bb)	BankBoston Directors Deferred Compensation Plan, as amended by a First Amendment and a Second Amendment thereto, incorporated by reference to Exhibit 10(ii) of the 2004 10-K.*
(cc)	BankBoston, N.A. Directors' Deferred Compensation Plan, as amended by a First Amendment and a Second Amendment thereto, incorporated by reference to Exhibit 10(jj) of the 2004 10-K.*
(dd)	BankBoston 1997 Stock Option Plan for Non-Employee Directors, as amended by an amendment thereto dated as of October 16, 2001, incorporated by reference to Exhibit 10(kk) of the 2004 10-K.*
(ee)	Description of BankBoston Director Retirement Benefits Exchange Program, incorporated by reference to Exhibit 10(ll) of the 2004 10-K.*
(ff)	Employment Agreement, dated as of March 14, 1999, between FleetBoston and Charles K. Gifford, as amended by an amendment thereto effective as of February 7, 2000, a Second Amendment thereto effective as of April 22, 2002, and a Third Amendment thereto effective as of October 1, 2002, incorporated by reference to Exhibit 10(mm) of the 2004 10-K.*
(gg)	Form of Change in Control Agreement entered into with Charles K. Gifford, incorporated by reference to Exhibit 10(nn) of the 2004 10-K.*
(hh)	Global amendment to definition of "change in control" or "change of control," together with a list of plans affected by such amendment, incorporated by reference to Exhibit 10(oo) of the 2004 10-K.*
(ii)	Retirement Agreement dated January 26, 2005 between Bank of America Corporation and Charles K. Gifford, incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K (File No. 1-6523) filed January 26, 2005.*
(jj)	Amendment to various FleetBoston stock option awards, dated March 25, 2004, incorporated by reference to Exhibit 10(ss) of the 2004 10-K.*
(kk)	MBNA Corporation Supplemental Executive Retirement Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10(kk) of the 2008 10-K.*
(ll)	Supplemental Executive Insurance Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10(ll) of the 2008 10-K.*
(mm)	MBNA Corporation Executive Deferred Compensation Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10(mm) of the 2008 10-K.
(nn)	MBNA Corporation 1997 Long Term Incentive Plan, as amended effective April 24, 2000 and restated, as adjusted for July 2002 stock split and as further amended effective April 15, 2005 and restated, and Amendment thereto dated December 15, 2006, incorporated by reference to Exhibit 10(nn) of the 2008 10-K.*
(oo)	Executive Non-Competition Agreement dated August 9, 1999 among Richard K. Struthers, MBNA Corporation and MBNA America Bank, N.A., incorporated by reference to Exhibit 10(pp) of the 2008 10-K.*
(pp)	Agreement Regarding Participation in the MBNA Corporation Supplemental Executive Retirement Plan dated December 22, 2008 between Bank of America Corporation and Richard K. Struthers, incorporated by reference to Exhibit 10(qq) of the 2008 10-K.*
(qq)	Merrill Lynch & Co., Inc. Employee Stock Compensation Plan, incorporated by reference to Exhibit 10(rr) of the 2008 10-K, and 2009 Restricted Stock Unit Award Agreement for Thomas K. Montag, filed herewith.*
(rr)	Employment Agreement dated October 27, 2003 between Bank of America Corporation and Brian T. Moynihan, incorporated by reference to Exhibit 10(d) of registrant's Registration Statement on Form S-4 (Registration No. 333-110924).*
(ss)	Cancellation Agreement dated October 26, 2005 between Bank of America Corporation and Brian T. Moynihan, incorporated by reference to Exhibit 10.1 of registrant's Current Report on Form 8-K (File No. 1-6523) filed October 26, 2005.*
(tt)	Agreement Regarding Participation in the Fleet Boston Supplemental Executive Retirement Plan dated October 26, 2005 between Bank of America Corporation and Brian T. Moynihan, incorporated by reference to Exhibit 10.2 of registrant's Current Report on Form 8-K (File No. 1-6523) filed October 26, 2005.*



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<u>Exhibit No.</u>	<u>Description</u>
(uu)	Forms of Stock Unit Agreements for salary stock units awarded to certain executive officers in connection with registrant's participation in the U.S. Department of Treasury's Troubled Asset Relief Program, filed herewith.*
(vv)	Boatmen's Supplemental Retirement Plan, effective as of August 8, 1989, filed herewith.*
(ww)	Employment Agreement dated January 30, 1996 between Boatmen's Bancshares, Inc. and Gregory L. Curl, filed herewith.*
(xx)	Employment Agreement dated September 26, 1996 between NationsBank Corporation and Gregory L. Curl, filed herewith.*
(yy)	Employment Letter dated May 7, 2001 between Bank of America Corporation and Gregory L. Curl, filed herewith.*
(zz)	Bank of America Corporation Equity Incentive Plan amended and restated effective as of January 1, 2008, filed herewith.*
(aaa)	Merrill Lynch & Co., Inc. Long-Term Incentive Compensation Plan amended as of January 1, 2009 and 2008 Restricted Units/Stock Option Grant Document for Thomas K. Montag, filed herewith.*
(bbb)	Employment Letter dated May 1, 2008 between Merrill Lynch & Co., Inc. and Thomas K. Montag and Summary of Agreement with respect to Post-Employment Medical Coverage, filed herewith.*
(ccc)	Amendment to various plans as required to the extent necessary to comply with Section III of the Emergency Economic Stabilization Act of 2008 (EESA) and form of waiver for any changes to compensation or benefits required to comply with the EESA, all in connection with the registrant's October 26, 2008 participation in the U.S. Department of Treasury's Troubled Assets Relief Program, incorporated by reference to Exhibit 10(ss) of the 2008 10-K.*
(ddd)	Further amendment to various plans and further form of waiver for any changes to compensation or benefits in connection with the registrant's January 15, 2009 participation in the U.S. Department of Treasury's Troubled Assets Relief Program, incorporated by reference to Exhibit 10(tt) of the 2008 10-K.*
(eee)	Letter Agreement, dated October 26, 2008, between the registrant and U.S. Department of the Treasury, with respect to the issuance and sale of registrant's Fixed Rate Cumulative Perpetual Preferred Stock, Series N and a warrant to purchase common stock, incorporated by reference to Exhibit 10.1 of registrant's Current Report on Form 8-K (File No. 1-6523) filed October 30, 2008.
(fff)	Letter Agreement, dated January 9, 2009, between the registrant and U.S. Department of the Treasury, with respect to the issuance and sale of registrant's Fixed Rate Cumulative Perpetual Preferred Stock, Series Q and a warrant to purchase common stock, incorporated by reference to Exhibit 10.1 of registrant's Current Report on Form 8-K (File No. 1-6523) filed January 13, 2009.
(ggg)	Securities Purchase Agreement, dated January 15, 2009, between the registrant and U.S. Department of the Treasury, with respect to the issuance and sale of registrant's Fixed Rate Cumulative Perpetual Preferred Stock, Series R and a warrant to purchase common stock, incorporated by reference to Exhibit 10.1 of registrant's Current Report on Form 8-K (File No. 1-6523) filed January 22, 2009.
(hhh)	Summary of Terms, dated January 15, 2009, incorporated by reference to Exhibit 10.2 of registrant's Current Report on Form 8-K (File No. 1-6523) filed January 22, 2009.
(iii)	Letter Agreement dated December 9, 2009 between the registrant and the U.S. Department of the Treasury, amending the Securities Purchase Agreement dated January 9, 2009, filed herewith.
(jjj)	Letter Agreement dated December 9, 2009 between the registrant and the U.S. Department of the Treasury, amending the Securities Purchase Agreement dated January 15, 2009, filed herewith.
12	Ratio of Earnings to Fixed Charges, filed herewith.
	Ratio of Earnings to Fixed Charges and Preferred Dividends, filed herewith.
21	List of Subsidiaries, filed herewith.
23	Consent of PricewaterhouseCoopers LLP, filed herewith.
24(a)	Power of Attorney, filed herewith.
(b)	Corporate Resolution, filed herewith.
31(a)	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith.
(b)	Certification of the Interim Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith.
32(a)	Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, filed herewith.
(b)	Certification of the Interim Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, filed herewith.
Exhibit 101.INS	XBRL Instance Document
Exhibit 101.SCH	XBRL Taxonomy Extension Schema Document
Exhibit 101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
Exhibit 101.LAB	XBRL Taxonomy Extension Label Linkbase Document
Exhibit 101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
Exhibit 101.DEF	XBRL Taxonomy Extension Definitions Linkbase Document

\* Exhibit is a management contract or a compensatory plan or arrangement.

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
BANKAMERICA CORPORATION

BankAmerica Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies that (i) the Certificate of Incorporation of the Corporation was originally filed on July 31, 1998, (ii) the Corporation was originally incorporated under the name "NationsBank (DE) Corporation," which name was changed to "NationsBank Corporation" on September 25, 1998 and to "BankAmerica Corporation" on September 30, 1998, (iii) this Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and (iv) the Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

1. The name of the Corporation is Bank of America Corporation.

2. The purposes for which the Corporation is organized are to engage in any lawful act or activity for which corporations may be organized and incorporated under the General Corporation Law of the State of Delaware.

3. The number of shares, par value \$.01 per share, the Corporation is authorized to issue is Five Billion One Hundred Million (5,100,000,000), divided into the following classes:

<u>Class</u>	<u>Number of Shares</u>
Common	5,000,000,000
Preferred	100,000,000

The class of common ("Common Stock") has unlimited voting rights and, after satisfaction of claims, if any, of the holders of preferred shares, is entitled to receive the net assets of the Corporation upon distribution.

The Board of Directors of the Corporation shall have full power and authority to establish one or more series within the class of preferred shares (the "Preferred Shares"), to define the designations, preferences, limitations and relative rights (including conversion rights) of shares within such class and to determine all variations between series.

The Board of Directors of the Corporation has

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designated, established and authorized the following series of Preferred Shares:

(a) 7% Cumulative Redeemable Preferred Stock, Series B.

A. Designation.

The designation of this series is "7% Cumulative Redeemable Preferred Stock, Series B" (hereinafter referred to as the "Series B Preferred Stock") and the number of shares constituting such series is Thirty-Five Thousand Forty-Five (35,045). Shares of Series B Preferred Stock shall have a stated value of \$100.00 per share.

B. Dividends.

The holders of record of the shares of the Series B Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors of the Corporation, out of any funds legally available for such purpose, cumulative cash dividends at an annual dividend rate per share of 7% of the stated value thereof, which amount is \$7.00 per annum, per share, and no more. Such dividends shall be payable each calendar quarter at the rate of \$1.75 per share on such dates as shall be fixed by resolution of the Board of Directors of the Corporation. The date from which dividends on such shares shall be cumulative shall be the first day after said shares are issued. Accumulations of dividends shall not bear interest. No cash dividend shall be declared, paid or set apart for any shares of Common Stock unless all dividends on all shares of the Series B Preferred Stock at the time outstanding for all past dividend periods and for the then current dividend shall have been paid, or shall have been declared and a sum sufficient for the payment thereof, shall have been set apart. Subject to the foregoing provisions of this paragraph B, cash dividends or other cash distributions as may be determined by the Board of Directors of the Corporation may be declared and paid upon the shares of the Common Stock of the Corporation from time to time out of funds legally available therefor, and the shares of the Series B Preferred Stock shall not be entitled to participate in any such cash dividend or other such cash distribution so declared and paid or made on such shares of Common Stock.

C. Redemption.

From and after October 31, 1988, any holder may, by written request, call upon the Corporation to redeem all or any part of said holder's shares of said Series B Preferred Stock at a redemption price of \$100.00 per share plus accumulated unpaid dividends to the date said request for redemption is received by the Corporation and no more (the "Redemption Price"). Any such request for redemption shall be accompanied by the certificates for which redemption is requested, duly endorsed or with appropriate stock power attached, in either case with signature guaranteed. Upon receipt by the Corporation of any such request for redemption from any holder of the Series B Preferred Stock, the Corporation shall forthwith redeem said stock at the

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Redemption Price, provided that: (i) full cumulative dividends have been paid or declared and set apart for payment upon all shares of any series of preferred stock ranking superior to the Series B Preferred Stock as to dividends or other distributions (collectively the "Superior Stock"); and (ii) the Corporation is not then in default or in arrears with respect to any sinking or analogous fund or call for tenders obligation or agreement for the purchase, redemption or retirement of any shares of Superior Stock. In the event that, upon receipt of a request for redemption, either or both of the conditions set forth in clauses (i) and (ii) above are not met, the Corporation shall forthwith return said request to the submitting shareholder along with a statement that the Corporation is unable to honor such request and explanation of the reasons therefor. From and after the receipt by the Corporation of a request for redemption from any holder of said Series B Preferred Stock, which request may be honored consistent with the foregoing provisions, all rights of such holder in the Series B Preferred Stock for which redemption is requested shall cease and terminate, except only the right to receive the Redemption Price thereof, but without interest.

D. Liquidation Preference.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Series B Preferred Stock shall be entitled to receive, subject to the provisions of paragraph G and before any payment shall be made to the holders of the shares of Common Stock, the amount of \$100.00 per share, plus accumulated dividends. After payment to the holders of the Series B Preferred Stock of the full amount as aforesaid, the holders of the Series B Preferred Stock as such shall have no right or claim to any of the remaining assets which shall be distributed ratably to the holders of the Common Stock. If, upon any such liquidation, dissolution or winding up, the assets available therefor are not sufficient to permit payments to the holders of Series B Preferred Stock of the full amount as aforesaid, then subject to the provisions of paragraph G, the holders of the Series B Preferred Stock then outstanding shall share ratably in the distribution of assets in accordance with the sums which would be payable if such holders were to receive the full amounts as aforesaid.

E. Sinking Fund.

There shall be no sinking fund applicable to the shares of Series B Preferred Stock.

F. Conversion.

The shares of Series B Preferred Stock shall not be convertible into any shares of Common Stock or any other class of shares, nor exchanged for any shares of Common Stock or any other class of shares.

G. Superior Stock.

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The Corporation may issue stock with preferences superior or equal to the shares of the Series B Preferred Stock without the consent of the holders thereof.

H. Voting Rights.

Each share of the Series B Preferred Stock shall be entitled to equal voting rights, share for share, with each share of the Common Stock.

(b) ESOP Convertible Preferred Stock, Series C.

The shares of the ESOP Convertible Preferred Stock, Series C, of the Corporation shall be designated "ESOP Convertible Preferred Stock, Series C," and the number of shares constituting such series shall be 3,000,000. The ESOP Convertible Preferred Stock, Series C, shall hereinafter be referred to as the "ESOP Preferred Stock."

A. Special Purpose Restricted Transfer Issue.

Shares of ESOP Preferred Stock shall be issued only to a trustee acting on behalf of an employee stock ownership plan or other employee benefit plan of the Corporation or any subsidiary of the Corporation. In the event of any transfer of shares of ESOP Preferred Stock to any person other than any such plan trustee or the Corporation, the shares of ESOP Preferred Stock so transferred, upon such transfer and without any further action by the Corporation or the holder, shall be automatically converted into shares of Common Stock on the terms otherwise provided for the conversion of shares of ESOP Preferred Stock into shares of Common Stock pursuant to paragraph E hereof and no such transferee shall have any of the voting powers, preferences and relative, participating, optional or special rights ascribed to shares of ESOP Preferred Stock hereunder but, rather, only the powers and rights pertaining to the Common Stock into which such shares of ESOP Preferred Stock shall be so converted. Certificates representing shares of ESOP Preferred Stock shall be legended to reflect such restrictions on transfer. Notwithstanding the foregoing provisions of this paragraph A, shares of ESOP Preferred Stock (i) may be converted into shares of Common Stock as provided by paragraph E hereof and the shares of Common Stock issued upon such conversion may be transferred by the holder thereof as permitted by law and (ii) shall be redeemable by the Corporation upon the terms and conditions provided by paragraphs F, G and H hereof.

B. Dividends and Distributions.

(1) Subject to the provisions for adjustment hereinafter set forth, the holders of shares of ESOP Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available therefor, cash dividends ("Preferred Dividends") in an amount equal to \$3.30 per share per annum, and no more, payable semi-annually, one-half on the first day of January and one-half on the first day of July of each year (each a "Dividend Payment Date") to holders of record at the

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start of business on such Dividend Payment Date. Preferred Dividends shall accrue on a daily basis whether or not the Corporation shall have earnings or surplus at the time, but Preferred Dividends on the shares of ESOP Preferred Stock for any period less than a full semi-annual period between Dividend Payment Dates shall be computed on the basis of a 360-day year of 30-day months. Accumulated but unpaid Preferred Dividends shall accumulate as of the Dividend Payment Date on which they first become payable, but no interest shall accrue on accumulated but unpaid Preferred Dividends.

(2) So long as any ESOP Preferred Stock shall be outstanding, no dividend shall be declared or paid or set apart for payment on any other series of stock ranking on a parity with the ESOP Preferred Stock as to dividends, unless there shall also be or have been declared and paid or set apart for payment on the ESOP Preferred Stock, like dividends for all dividend payment periods of the ESOP Preferred Stock ending on or before the dividend payment date of such parity stock, ratably in proportion to the respective amounts of dividends accumulated and unpaid through such dividend payment period on the ESOP Preferred Stock and accumulated and unpaid or payable on such parity stock through the dividend payment period on such parity stock next preceding such Dividend Payment Date. In the event that full cumulative dividends on the ESOP Preferred Stock have not been declared and paid or set apart for payment when due, the Corporation shall not declare or pay or set apart for payment any dividends or make any other distributions on, or make any payment on account of the purchase, redemption or other retirement of any other class of stock or series thereof of the Corporation ranking, as to dividends or as to distributions in the event of a liquidation, dissolution or winding-up of the Corporation, junior to the ESOP Preferred Stock until full cumulative dividends on the ESOP Preferred Stock shall have been paid or declared and provided for; provided, however, that the foregoing shall not apply to (i) any dividend payable solely in any shares of any stock ranking, as to dividends or as to distributions in the event of the liquidation, dissolution or winding-up of the Corporation, junior to the ESOP Preferred Stock, or (ii) the acquisition of shares of any stock ranking, as to dividends or as to distributions in the event of a liquidation, dissolution or winding-up of the Corporation, junior to the ESOP Preferred Stock either (A) pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted or (B) in exchange solely for shares of any other stock ranking junior to the ESOP Preferred Stock.

C. Voting Rights.

The holders of shares of ESOP Preferred Stock shall have the following voting rights:

(1) The holders of ESOP Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of

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Common Stock as one class. Each share of the ESOP Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of ESOP Preferred Stock could be converted on the record date for determining the shareholders entitled to vote, rounded to the nearest whole vote; it being understood that whenever the "Conversion Ratio" (as defined in paragraph E hereof) is adjusted as provided in paragraph I hereof, the voting rights of the ESOP Preferred Stock shall also be similarly adjusted.

(2) Except as otherwise required by the General Corporation Law of the State of Delaware or set forth in paragraph C(1), holders of ESOP Preferred Stock shall have no special voting rights and their consent shall not be required for the taking of any corporate action.

D. Liquidation, Dissolution or Winding-Up.

(1) Upon any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the holders of ESOP Preferred Stock shall be entitled to receive out of the assets of the Corporation which remain after satisfaction in full of all valid claims of creditors of the Corporation and which are available for payment to shareholders and subject to the rights of the holders of any stock of the Corporation ranking senior to or on a parity with the ESOP Preferred Stock in respect of distributions upon liquidation, dissolution or winding-up of the Corporation, before any amount shall be paid or distributed among the holders of Common Stock or any other shares ranking junior to the ESOP Preferred Stock in respect of the distributions upon liquidation, dissolution or winding-up of the Corporation, liquidating distributions in the amount of \$42.50 per share, plus an amount equal to all accrued and unpaid dividends thereon to the date fixed for distribution, and no more. If upon any liquidation, dissolution or winding-up of the Corporation, the amounts payable with respect to the ESOP Preferred Stock and any other stock ranking as to any such distribution on a parity with the ESOP Preferred Stock are not paid in full, the holders of the ESOP Preferred Stock and such other stock shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled. After payment of the full amount to which they are entitled as provided by the foregoing provisions of this paragraph D(1), the holders of shares of ESOP Preferred Stock shall not be entitled to any further right or claim to any of the remaining assets of the Corporation.

(2) Neither the merger or consolidation of the Corporation with or into any other corporation, nor the merger or consolidation of any other corporation with or into the Corporation, nor the sale, transfer or lease of all or any portion of the assets of the Corporation, shall be deemed to be a dissolution, liquidation or winding-up of the affairs of the Corporation for purposes of this paragraph D, but the holders of ESOP Preferred Stock shall nevertheless be entitled in the event of any such merger or consolidation to the rights provided by paragraph H hereof.

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(3) Written notice of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable to holders of ESOP Preferred Stock in such circumstances shall be payable, shall be given by first-class mail, postage prepaid, mailed not less than twenty (20) days prior to any payment date stated therein, to the holders of ESOP Preferred Stock, at the address shown on the books of the Corporation or any transfer agent for the ESOP Preferred Stock.

E. Conversion into Common Stock.

(1) A holder of shares of ESOP Preferred Stock shall be entitled, at any time prior to the close of business on the date fixed for redemption of such shares pursuant to paragraph F, G or H hereof, to cause any or all of such shares to be converted into shares of Common Stock at a conversion rate equal to the ratio of 1.0 share of ESOP Preferred Stock to 1.68 shares of Common Stock (as adjusted as hereinafter provided, the "Conversion Ratio"). The Conversion Ratio set forth above is subject to adjustment pursuant to this Certificate of Incorporation.

(2) Any holder of shares of ESOP Preferred Stock desiring to convert such shares into shares of Common Stock shall surrender the certificate or certificates representing the shares of ESOP Preferred Stock being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the ESOP Preferred Stock or such office or offices in the continental United States of an agent for conversion as may from time to time be designated by notice to the holders of the ESOP Preferred Stock by the Corporation or the transfer agent for the ESOP Preferred Stock, accompanied by written notice of conversion. Such notice of conversion shall specify (i) the number of shares of ESOP Preferred Stock to be converted and the name or names in which such holder wishes the certificate or certificates for Common Stock and for any shares of ESOP Preferred Stock not to be so converted to be issued, and (ii) the address to which such holder wishes delivery to be made of such new certificates to be issued upon such conversion.

(3) Upon surrender of a certificate representing a share or shares of ESOP Preferred Stock for conversion, the Corporation shall issue and send by hand delivery (with receipt to be acknowledged) or by first-class mail, postage prepaid, to the holder thereof or to such holder's designee, at the address designated by such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled upon conversion. In the event that there shall have been surrendered a certificate or certificates representing shares of ESOP Preferred Stock, only part of which are to be converted, the Corporation shall issue and deliver to such holder or such holder's designee a new certificate or certificates representing the number of shares of ESOP Preferred Stock which shall not have been converted.



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(4) The issuance by the Corporation of shares of Common Stock upon a conversion of shares of ESOP Preferred Stock into shares of Common Stock made at the option of the holder thereof shall be effective as of the earlier of (i) the delivery to such holder or such holder's designee of the certificate or certificates representing the shares of Common Stock issued upon conversion thereof or (ii) the commencement of business on the second business day after the surrender of the certificate or certificates for the shares of ESOP Preferred Stock to be converted, duly assigned or endorsed for transfer to the corporation (or accompanied by duly executed stock powers relating thereto) as provided hereby. On and after the effective date of conversion, the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock, but no allowance or adjustment shall be made in respect of dividends payable to holders of Common Stock in respect of any period prior to such effective date. The Corporation shall not be obligated to pay any dividends which shall have been declared and shall be payable to holders of shares of ESOP Preferred Stock on a Dividend Payment Date if such Dividend Payment Date for such dividend shall coincide with or be on or subsequent to the effective date of conversion of such shares.

(5) The Corporation shall not be obligated to deliver to holders of ESOP Preferred Stock any fractional share or shares of Common Stock issuable upon any conversion of such shares of ESOP Preferred Stock, but in lieu thereof may make a cash payment in respect thereof in any manner permitted by law.

(6) The Corporation shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of shares of ESOP Preferred Stock as herein provided, free from any preemptive rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all shares of ESOP Preferred Stock then outstanding. The Corporation shall prepare and shall use its best efforts to obtain and keep in force such governmental or regulatory permits or other authorizations as may be required by law, and shall comply with all requirements as to registration or qualification of the Common Stock, in order to enable the Corporation lawfully to issue and deliver to each holder of record of ESOP Preferred Stock such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all shares of ESOP Preferred Stock then outstanding and convertible into shares of Common Stock.

F. Redemption At the Option of the Corporation.

(1) The ESOP Preferred Stock shall be redeemable, in whole or in part, at the option of the Corporation at any time, at a redemption price per share (except as to redemption pursuant to paragraph F(3)) of \$42.83 prior to July 1, 1999 and \$42.50 thereafter, plus, in each case, an amount equal to all accrued and unpaid dividends thereon to the date fixed for redemption. Payment of the redemption price shall be made by the Corporation

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in cash or shares of Common Stock, or a combination thereof, as permitted by paragraph F(5). From and after the date fixed for redemption, dividends on shares of ESOP Preferred Stock called for redemption will cease to accrue, such shares will no longer be deemed to be outstanding and all rights in respect of such shares of the Corporation shall cease, except the right to receive the redemption price. If less than all of the outstanding shares of ESOP Preferred Stock are to be redeemed, the Corporation shall either redeem a portion of the shares of each holder determined pro rata based on the number of shares held by each holder or shall select the shares to be redeemed by lot, as may be determined by the Board of Directors of the Corporation.

(2) Unless otherwise required by law, notice of redemption will be sent to the holders of ESOP Preferred Stock at the address shown on the books of the Corporation or any transfer agent for the ESOP Preferred Stock by first-class mail, postage prepaid, mailed not less than twenty (20) days nor more than sixty (60) days prior to the redemption date. Each such notice shall state: (i) the redemption date; (ii) the total number of shares of the ESOP Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; (v) that dividends on the shares to be redeemed will cease to accrue on such redemption date; and (vi) the conversion rights of the shares to be redeemed, the period within which conversion rights may be exercised, and the Conversion Ratio and number of shares of Common Stock issuable upon conversion of a share of ESOP Preferred Stock at the time. These notice provisions may be supplemented if necessary in order to comply with optional redemption provisions for preferred stock which may be required under the Internal Revenue Code of 1986, as amended, or the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Upon surrender of the certificates for any shares so called for redemption and not previously converted (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the date fixed for redemption and at the applicable redemption price set forth in this paragraph F.

(3) In the event of a change in the federal tax law of the United States of America which has the effect of precluding the Corporation from claiming any of the tax deductions for dividends paid on the ESOP Preferred Stock when such dividends are used as provided under Section 404(k)(2) of the Internal Revenue Code of 1986, as amended and in effect on the date shares of ESOP Preferred Stock are initially issued, the Corporation may, within 180 days following the effective date of such tax legislation and implementing regulations of the Internal Revenue Service, if any, in its sole discretion and notwithstanding anything to the contrary in paragraph F(1), elect to redeem any or all such shares for the amount payable in respect of the shares upon liquidation of the Corporation pursuant to paragraph D.

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(4) In the event the C&S/Sovran Retirement Savings, ESOP and Profit Sharing Plan (as amended, together with any successor plan, the "Plan") is terminated, the Corporation shall, notwithstanding anything to the contrary in paragraph F(1), redeem all shares of ESOP Preferred Stock for the amount payable in respect of the shares upon redemption of the ESOP Preferred Stock pursuant to paragraph F(1) hereof.

(5) The Corporation, at its option, may make payment of the redemption price required upon redemption of shares of ESOP Preferred Stock in cash or in shares of Common Stock, or in a combination of such shares and cash, any such shares to be valued for such purpose at their Fair Market Value (as defined in paragraph I(7) hereof).

G. Other Redemption Rights.

Shares of ESOP Preferred Stock shall be redeemed by the Corporation at a price which is the greater of the Conversion Value (as defined in paragraph I) of the ESOP Preferred Stock on the date fixed for redemption or a redemption price of \$42.50 per share plus accrued and unpaid dividends thereon to the date fixed for redemption, for shares of Common Stock (any such shares of Common Stock to be valued for such purpose as provided by paragraph F(5) hereof), at the option of the holder, at any time and from time to time upon notice to the Corporation given not less than five (5) business days prior to the date fixed by the Corporation in such notice for such redemption, when and to the extent necessary (i) to provide for distributions required to be made under, or to satisfy an investment election provided to participants in accordance with, the Plan to participants in the Plan or (ii) to make payment of principal, interest or premium due and payable (whether as scheduled or upon acceleration) on any indebtedness incurred by the holder or Trustee under the Plan for the benefit of the Plan.

H. Consolidation, Merger, etc.

(1) In the event that the Corporation shall consummate any consolidation or merger or similar transaction, however named, pursuant to which the outstanding shares of Common Stock are by operation of law exchanged solely for or changed, reclassified or converted solely into stock of any successor or resulting company (including the Corporation and any company that directly or indirectly owns all of the outstanding capital stock of such successor or resulting company) that constitutes "qualifying employer securities" with respect to a holder of ESOP Preferred Stock within the meaning of Section 409(1) of the Internal Revenue Code of 1986, as amended, and Section 407(d)(5) of ERISA, or any successor provisions of law, and, if applicable, for a cash payment in lieu of fractional shares, if any, the shares of ESOP Preferred Stock of such holder shall be assumed by and shall become preferred stock of such successor or resulting company, having in respect of such company insofar as possible the same powers, preferences and relative, participating, optional or other special rights (including the redemption rights provided by paragraphs F, G and H hereof), and the qualifications,

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limitations or restrictions thereon, that the ESOP Preferred Stock had immediately prior to such transaction, except that after such transaction each share of the ESOP Preferred Stock shall be convertible, otherwise on the terms and conditions provided by paragraph E hereof, into the qualifying employer securities so receivable by a holder of the number of shares of Common Stock into which such shares of ESOP Preferred Stock could have been converted immediately prior to such transaction if such holder of Common Stock failed to exercise any rights of election to receive any kind or amount of stock, securities, cash or other property (other than such qualifying employer securities and a cash payment, if applicable, in lieu of fractional shares) receivable upon such transaction (provided that, if the kind or amount of qualifying employer securities receivable upon such transaction is not the same for each non-electing share, then the kind and amount of qualifying employer securities receivable upon such transaction for each non-electing share shall be the kind and amount so receivable per share by a plurality of the non-electing shares). The rights of the ESOP Preferred Stock as preferred stock of such successor or resulting company shall successively be subject to adjustments pursuant to paragraph I hereof after any such transaction as nearly equivalent to the adjustments provided for by such paragraph prior to such transaction. The Corporation shall not consummate any such merger, consolidation or similar transaction unless all then outstanding shares of the ESOP Preferred Stock shall be assumed and authorized by the successor or resulting company as aforesaid.

(2) In the event that the Corporation shall consummate any consolidation or merger or similar transaction, however named, pursuant to which the outstanding shares of Common Stock are by operation of law exchanged for or changed, reclassified or converted into other stock or securities or cash or any other property, or any combination thereof, other than any such consideration which is constituted solely of qualifying employer securities (as referred to in paragraph H(1)) and cash payments, if applicable, in lieu of fractional shares, all outstanding shares of ESOP Preferred Stock shall, without any action on the part of the Corporation or any holder thereof (but subject to paragraph H(3)), be deemed converted by virtue of such merger, consolidation or similar transaction immediately prior to such consummation into the number of shares of Common Stock into which such shares of ESOP Preferred Stock could have been converted at such time, and each share of ESOP Preferred Stock shall, by virtue of such transaction and on the same terms as apply to the holders of Common Stock, be converted into or exchanged for the aggregate amount of stock, securities, cash or other property (payable in like kind) receivable by a holder of the number of shares of Common Stock into which such shares of ESOP Preferred Stock could have been converted immediately prior to such transaction if such holder of Common Stock failed to exercise any rights of election as to the kind or amount of stock, securities, cash or other property receivable upon such transaction (provided that, if the kind or amount of stock, securities, cash or other property receivable upon such transaction is not the same for each non-electing share, then the kind and amount of stock,

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securities, cash or other property receivable upon such transaction for each non-electing share shall be the kind and amount so receivable per share by a plurality of the non-electing shares).

(3) In the event the Corporation shall enter into any agreement providing for any consolidation or merger or similar transaction described in paragraph H(2), then the Corporation shall as soon as practicable thereafter (and in any event at least ten (10) business days before consummation of such transaction) give notice of such agreement and the material terms thereof to each holder of ESOP Preferred Stock and each such holder shall have the right to elect, by written notice to the Corporation, to receive, upon consummation of such transaction (if and when such transaction is consummated), from the Corporation or the successor of the Corporation, in redemption and retirement of such ESOP Preferred Stock, a cash payment equal to the amount payable in respect of shares of ESOP Preferred Stock upon redemption pursuant to paragraph F(1) hereof. No such notice of redemption shall be effective unless given to the Corporation prior to the close of business on the second business day prior to consummation of such transaction, unless the Corporation or the successor of the Corporation shall waive such prior notice, but any notice of redemption so given prior to such time may be withdrawn by notice of withdrawal given to the Corporation prior to the close of business on the second business day prior to consummation of such transaction.

I. Anti-dilution Adjustments.

(1) In the event the Corporation shall, at any time or from time to time while any of the shares of the ESOP Preferred Stock are outstanding, (i) pay a dividend or make a distribution in respect of the Common Stock in shares of Common Stock, (ii) subdivide the outstanding shares of Common Stock, or (iii) combine the outstanding shares of Common Stock into a smaller number of shares, in each case whether by reclassification of shares, recapitalization of the Corporation (including a recapitalization effected by a merger or consolidation to which paragraph H hereof does not apply) or otherwise, the Conversion Ratio in effect immediately prior to such action shall be adjusted by multiplying such Conversion Ratio by the fraction the numerator of which is the number of shares of Common Stock outstanding immediately before such event and the denominator of which is the number of shares of Common Stock outstanding immediately after such event. An adjustment made pursuant to this paragraph I(1) shall be given effect, upon payment of such a dividend or distribution, as of the record date for the determination of shareholders entitled to receive such dividend or distribution (on a retroactive basis) and in the case of a subdivision or combination shall become effective immediately as of the effective date thereof.

(2) In the event that the Corporation shall, at any time or from time to time while any of the shares of ESOP Preferred Stock are outstanding, issue to holders of shares of Common Stock as a dividend or distribution, including by way of a reclassification of shares or a recapitalization of the Corporation, any right or

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warrant to purchase shares of Common Stock (but not including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock) at a purchase price per share less than the Fair Market Value (as hereinafter defined) of a share of Common Stock on the date of issuance of such right or warrant, then, subject to the provisions of paragraphs I(5) and I(6), the Conversion Ratio shall be adjusted by multiplying such Conversion Ratio by the fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Common Stock which could be purchased at the Fair Market Value of a share of Common Stock at the time of such issuance for the maximum aggregate consideration payable upon exercise in full of all such rights or warrants and the denominator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Common Stock that could be acquired upon exercise in full of all such rights and warrants.

(3) In the event the Corporation shall, at any time and from time to time while any of the shares of ESOP Preferred Stock are outstanding, issue, sell or exchange shares of Common Stock (other than pursuant to any right or warrant to purchase or acquire shares of Common Stock (including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock) and other than pursuant to any dividend reinvestment plan or employee or director incentive or benefit plan or arrangement, including any employment, severance or consulting agreement, of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted) for a consideration having a Fair Market Value on the date of such issuance, sale or exchange less than the Fair Market Value of such shares on the date of such issuance, sale or exchange, then, subject to the provisions of paragraphs I(5) and (6), the Conversion Ratio shall be adjusted by multiplying such Conversion Ratio by the fraction the numerator of which shall be the sum of (i) the Fair Market Value of all the shares of Common Stock outstanding on the day immediately preceding the first public announcement of such issuance, sale or exchange plus (ii) the Fair Market Value of the consideration received by the Corporation in respect of such issuance, sale or exchange of shares of Common Stock, and the denominator of which shall be the product of (i) the Fair Market Value of a share of Common Stock on the day immediately preceding the first public announcement of such issuance, sale or exchange multiplied by (ii) the sum of the number of shares of Common Stock outstanding on such day plus the number of shares of Common Stock so issued, sold or exchanged by the Corporation. In the event the Corporation shall, at any time or from time to time while any shares of ESOP Preferred Stock are outstanding, issue, sell or exchange any right or warrant to purchase or acquire shares of Common Stock (including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock), other than any such issuance to holders of shares of Common Stock as a dividend or distribution (including by way of a reclassification of shares or a recapitalization of the Corporation) and other than pursuant to any dividend reinvestment

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plan or employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted, for a consideration having a Fair Market Value on the date of such issuance, sale or exchange less than the Non-Dilutive Amount (as hereinafter defined), then, subject to the provisions of paragraphs I(5) and (6), the Conversion Ratio shall be adjusted by multiplying such Conversion Ratio by a fraction the numerator of which shall be the sum of (a) the Fair Market Value of all the shares of Common Stock outstanding on the day immediately preceding the first public announcement of such issuance, sale or exchange plus (b) the Fair Market Value of the consideration received by the Corporation in respect of such issuance, sale or exchange of such right or warrant plus (c) the Fair Market Value at the time of such issuance of the consideration which the Corporation would receive upon exercise in full of all such rights or warrants, and the denominator of which shall be the product of (a) the Fair Market Value of a share of Common Stock on the day immediately preceding the first public announcement of such issuance, sale or exchange multiplied by (b) the sum of the number of shares of Common Stock outstanding on such day plus the maximum number of shares of Common Stock which could be acquired pursuant to such right or warrant at the time of the issuance, sale or exchange of such right or warrant (assuming shares of Common Stock could be acquired pursuant to such right or warrant at such time).

(4) In the event the Corporation shall, at any time or from time to time while any of the shares of ESOP Preferred Stock are outstanding, make any Extraordinary Distribution (as hereinafter defined) in respect of the Common Stock, whether by dividend, distribution, reclassification of shares or recapitalization of the Corporation (including a recapitalization or reclassification effected by a merger or consolidation to which paragraph H hereof does not apply) or effect a Pro Rata Repurchase (as hereinafter defined) of Common Stock, the Conversion Ratio in effect immediately prior to such Extraordinary Distribution or Pro Rata Repurchase shall, subject to paragraphs I(5) and (6), be adjusted by multiplying such Conversion Ratio by a fraction the numerator of which shall be (a) the product of (i) the number of shares of Common Stock outstanding immediately before such Extraordinary Distribution or Pro Rata Repurchase multiplied by (ii) the Fair Market Value (as herein defined) of a share of Common Stock on the Valuation Date (as hereinafter defined) with respect to an Extraordinary Distribution, or on the applicable expiration date (including all extensions thereof) of any tender offer which is a Pro Rata Repurchase, or on the date of purchase with respect to any Pro Rata Repurchase which is not a tender offer, as the case may be, minus (b) the Fair Market Value of the Extraordinary Distribution or the aggregate purchase price of the Pro Rata Repurchase, as the case may be, and the denominator of which shall be the product of (i) the number of shares of Common Stock outstanding immediately before such Extraordinary Distribution or Pro Rata Repurchase minus, in the case of a Pro Rata Repurchase, the number of shares of Common Stock repurchased by the Corporation multiplied by (ii) the Fair Market Value of a share of Common Stock on the record date with respect to an

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Extraordinary Distribution or on the applicable expiration date (including all extensions thereof) of any tender offer which is a Pro Rata Repurchase or on the date of purchase with respect to any Pro Rata Repurchase which is not a tender offer, as the case may be. The Corporation shall send each holder of ESOP Preferred Stock (x) notice of its intent to make any Extraordinary Distribution and (y) notice of any offer by the Corporation to make a Pro Rata Repurchase, in each case at the same time as, or as soon as practicable after, such offer is first communicated (including by announcement of a record date in accordance with the rules of any stock exchange on which the Common Stock is listed or admitted to trading) to holders of Common Stock. Such notice shall indicate the intended record date and the amount and nature of such dividend or distribution, or the number of shares subject to such offer for a Pro Rata Repurchase and the purchase price payable by the Corporation pursuant to such offer, as well as the Conversion Ratio and the number of shares of Common Stock into which a share of ESOP Preferred Stock may be converted at such time.

(5) Notwithstanding any other provisions of this paragraph I, the Corporation shall not be required to make any adjustment of the Conversion Ratio unless such adjustment would require an increase or decrease of at least one percent (1%) in the Conversion Ratio. Any lesser adjustment shall be carried forward and shall be made no later than the time of, and together with, the next subsequent adjustment which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least one percent (1%) in the Conversion Ratio.

(6) If the Corporation shall make any dividend or distribution on the Common Stock or issue any Common Stock, other capital stock or other security of the Corporation or any rights or warrants to purchase or acquire any such security, which transaction does not result in an adjustment to the Conversion Ratio pursuant to the foregoing provisions of this paragraph I, the Board of Directors of the Corporation shall consider whether such action is of such a nature that an adjustment to the Conversion Ratio should equitably be made in respect of such transaction. If in such case the Board of Directors of the Corporation determines that the adjustment to the Conversion Ratio should be made, an adjustment shall be made effective as of such date, as determined by the Board of Directors of the Corporation. The determination of the Board of Directors of the Corporation as to whether an adjustment to the Conversion Ratio should be made pursuant to the foregoing provisions of this paragraph I(6), and, if so, as to what adjustment should be made and when, shall be final and binding on the Corporation and all shareholders of the Corporation. The Corporation shall be entitled to make such additional adjustments in the Conversion Ratio, in addition to those required by the foregoing provisions of this paragraph I, as shall be necessary in order that any dividend or distribution in shares of capital stock of the Corporation, subdivision, reclassification or combination of shares of stock of the Corporation or any recapitalization of the Corporation shall not be taxable to holders of the Common Stock.



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(7) For purposes of this paragraph I, the following definitions shall apply:

“Conversion Value” shall mean the Fair Market Value of the aggregate number of shares of Common Stock into which a share of ESOP Preferred Stock is convertible.

“Extraordinary Distribution” shall mean any dividend or other distribution (effected while any of the shares of ESOP Preferred Stock are outstanding) (a) of cash, where the aggregate amount of such cash dividend and distribution together with the amount of all cash dividends and distributions made during the preceding period of 12 months, when combined with the aggregate amount of all Pro Rata Repurchases (for this purpose, including only that portion of the aggregate purchase price of such Pro Rata Repurchase which is in excess of the Fair Market Value of the Common Stock repurchased as determined on the applicable expiration date (including all extensions thereof) of any tender offer or exchange offer which is a Pro Rata Repurchase, or the date of purchase with respect to any other Pro Rata Repurchase which is not a tender offer or exchange offer made during such period), exceeds Twelve and One- Half percent (12.5%) of the aggregate Fair Market Value of all shares of Common Stock outstanding on the record date for determining the shareholders entitled to receive such Extraordinary Distribution and (b) any shares of capital stock of the Corporation (other than shares of Common Stock), other securities of the Corporation (other than securities of the type referred to in paragraph I(2)), evidence of indebtedness of the Corporation or any other person or any other property (including shares of any subsidiary of the Corporation), or any combination thereof. The Fair Market Value of an Extraordinary Distribution for purposes of paragraph I(4) shall be the sum of the Fair Market Value of such Extraordinary Distribution plus the amount of any cash dividends which are not Extraordinary Distributions made during such twelve- month period and not previously included in the calculation of an adjustment pursuant to paragraph I(4).

“Fair Market Value” shall mean, as to shares of Common Stock or any other class of capital stock or securities of the Corporation or any other issuer which are publicly traded, the average of the Current Market Prices (as hereinafter defined) of such shares or securities for each day of the Adjustment Period (as hereinafter defined). “Current Market Price” of publicly traded shares of Common Stock or any other class of capital stock or other security of the Corporation or any other issuer for a day shall mean the last reported sales price, regular way, or, in case

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no sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in either case as reported on the New York Stock Exchange Composite Tape or, if such security is not listed or admitted to trading on the New York Stock Exchange, on the principal national securities exchange on which such security is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on The Nasdaq National Market or, if such security is not quoted on Nasdaq, the average of the closing bid and asked prices on each such day in the over-the-counter market as reported by Nasdaq or, if bid and asked prices for such security on each such day shall not have been reported through Nasdaq, the average of the bid and asked prices for such day as furnished by any New York Stock Exchange member firm selected for such purpose by the Board of Directors of the Corporation or a committee thereof on each trading day during the Adjustment Period. "Adjustment Period" shall mean the period of five (5) consecutive trading days preceding the date as of which the Fair Market Value of a security is to be determined. The "Fair Market Value" of any security which is not publicly traded or of any other property shall mean the fair value thereof as determined by an independent investment banking or appraisal firm experienced in the valuation of such securities or property selected in good faith by the Board of Directors of the Corporation or a committee thereof, or, if no such investment banking or appraisal firm is in the good faith judgment of the Board of Directors or such committee available to make such determination, as determined in good faith by the Board of Directors of the Corporation or such committee.

"Non-Dilutive Amount" in respect of an issuance, sale or exchange by the Corporation of any right or warrant to purchase or acquire shares of Common Stock (including any security convertible into or exchangeable for shares of Common Stock) shall mean the remainder of (a) the product of the Fair Market Value of a share of Common Stock on the day preceding the first public announcement of such issuance, sale or exchange multiplied by the maximum number of shares of Common Stock which could be acquired on such date upon the exercise in full of such rights and warrants (including upon the conversion or exchange of all such convertible or exchangeable securities), whether or not exercisable (or convertible or exchangeable) at such date, minus (b) the aggregate amount payable pursuant to such right or warrant to purchase or acquire such maximum number of shares of Common Stock; provided, however, that in no event shall the Non-Dilutive Amount be less than zero. For purposes of the foregoing sentence, in the case of a security convertible into or exchangeable for shares of Common Stock, the amount payable pursuant to a right or

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warrant to purchase or acquire shares of Common Stock shall be the Fair Market Value of such security on the date of the issuance, sale or exchange of such security by the Corporation.

“Pro Rata Repurchase” shall mean any purchase of shares of Common Stock by the Corporation or any subsidiary thereof, whether for cash, shares of capital stock of the Corporation, other securities of the Corporation, evidences of indebtedness of the Corporation or any other person or any other property (including shares of a subsidiary of the Corporation), or any combination thereof, effected while any of the shares of ESOP Preferred Stock are outstanding, pursuant to any tender offer or exchange offer subject to Section 13(e) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or any successor provision of law, or pursuant to any other offer available to substantially all holders of Common Stock; provided, however, that no purchase of shares by the Corporation or any subsidiary thereof made in open market transactions shall be deemed a Pro Rata Repurchase. For purposes of this paragraph I(7), shares shall be deemed to have been purchased by the Corporation or any subsidiary thereof “in open market transactions” if they have been purchased substantially in accordance with the requirements of Rule 10b-18 as in effect under the Exchange Act, on the date shares of ESOP Preferred Stock are initially issued by the Corporation or on such other terms and conditions as the Board of Directors of the Corporation or a committee thereof shall have determined are reasonably designed to prevent such purchases from having a material effect on the trading market for the Common Stock.

“Valuation Date” with respect to an Extraordinary Distribution shall mean the date that is five (5) business days prior to the record date for such Extraordinary Distribution.

(8) Whenever an adjustment to the Conversion Ratio is required pursuant hereto, the Corporation shall forthwith place on file with the transfer agent for the Common Stock and the ESOP Preferred Stock if there be one, and with the Secretary of the Corporation, a statement signed by two officers of the Corporation, stating the adjusted Conversion Ratio determined as provided herein and the voting rights (as appropriately adjusted) of the ESOP Preferred Stock. Such statement shall set forth in reasonable detail such facts as shall be necessary to show the reason and the manner of computing such adjustment, including any determination of Fair Market Value involved in such computation. Promptly after each adjustment to the Conversion Ratio and the related voting rights of the ESOP Preferred Stock, the Corporation shall mail a notice thereof to each holder of shares of the ESOP Preferred Stock.

J. Ranking; Retirement of Shares.

(1) The ESOP Preferred Stock shall rank (a) senior to the Common Stock as to the payment of dividends and the distribution of assets on liquidation, dissolution and winding-up of the Corporation and (b) unless otherwise provided in the Articles of Incorporation of the Corporation or an amendment to such Articles of Incorporation relating to a subsequent series of Preferred Shares, junior to all other series of Preferred Shares as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding-up.

(2) Any shares of ESOP Preferred Stock acquired by the Corporation by reason of the conversion or redemption of such shares as provided hereby, or otherwise so acquired, shall be retired as shares of ESOP Preferred Stock and restored to the status of authorized but unissued shares of Preferred Shares, undesignated as to series, and may thereafter be reissued as part of a new series of such Preferred Shares as permitted by law.

K. Miscellaneous.

(1) All notices referred to herein shall be in writing, and all notices hereunder shall be deemed to have been given upon the earlier of receipt thereof or three (3) business days after the mailing thereof if sent by registered mail (unless first-class mail shall be specifically permitted for such notice under the terms hereof) with postage prepaid, addressed: (a) if to the Corporation, to its office at Bank of America Corporate Center, Charlotte, North Carolina 28255 (Attention: Treasurer) or to the transfer agent for the ESOP Preferred Stock, or other agent of the Corporation designated as permitted hereby or (b) if to any holder of the ESOP Preferred Stock or Common Stock, as the case may be, to such holder at the address of such holder as listed in the stock record books of the Corporation (which may include the records of any transfer agent for the ESOP Preferred Stock or Common Stock, as the case may be) or (c) to such other address as the Corporation or any such holder, as the case may be, shall have designated by notice similarly given.

(2) The term "Common Stock" as used herein means the Corporation's Common Stock, as the same existed at the date of filing of the Amendment to the Corporation's Articles of Incorporation relating to the ESOP Preferred Stock or any other class of stock resulting from successive changes or reclassification of such Common Stock consisting solely of changes in par value, or from par value to no par value. In the event that, at any time as a result of an adjustment made pursuant to paragraph I hereof, the holder of any share of the ESOP Preferred Stock upon thereafter surrendering such shares for conversion shall become entitled to receive any shares or other securities of the Corporation other than shares of Common Stock, the Conversion Ratio in respect of such other shares or securities so receivable upon conversion of shares of ESOP Preferred Stock shall thereafter be adjusted, and shall be subject to further adjustment from time to time, in a manner and on terms as nearly equivalent as practicable to the provisions

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with respect to Common Stock contained in paragraph I hereof, and the provisions of paragraphs A through H, J, and K hereof with respect to the Common Stock shall apply on like or similar terms to any such other shares or securities.

(3) The Corporation shall pay any and all stock transfer and documentary stamp taxes that may be payable in respect of any issuance or delivery of shares of ESOP Preferred Stock or shares of Common Stock or other securities issued on account of ESOP Preferred Stock pursuant hereto or certificates representing such shares or securities. The Corporation shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issuance or delivery of shares of ESOP Preferred Stock or Common Stock or other securities in a name other than that in which the shares of ESOP Preferred Stock with respect to which such shares or other securities are issued or delivered were registered, or in respect of any payment to any person with respect to any such shares or securities other than a payment to the registered holder thereof, and shall not be required to make any such issuance, delivery or payment unless and until the person otherwise entitled to such issuance, delivery or payment has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid or is not payable.

(4) In the event that a holder of shares of ESOP Preferred Stock shall not by written notice designate the name in which shares of Common Stock to be issued upon conversion of such shares should be registered or to whom payment upon redemption of shares of ESOP Preferred Stock should be made or the address to which the certificate or certificates representing such shares, or such payment, should be sent, the Corporation shall be entitled to register such shares, and make such payment, in the name of the holder of such ESOP Preferred Stock as shown on the records of the Corporation and to send the certificate or certificates representing such shares, or such payment, to the address of such holder shown on the records of the Corporation.

(5) The Corporation may appoint, and from time to time discharge and change, a transfer agent for the ESOP Preferred Stock. Upon any such appointment or discharge of a transfer agent, the Corporation shall send notice thereof by first-class mail, postage prepaid, to each holder of record of ESOP Preferred Stock.

(c) \$2.50 Cumulative Convertible Preferred Stock, Series BB.

A. Designation.

The designation of this series is "\$2.50 Cumulative Convertible Preferred Stock, Series BB" (hereinafter referred to as the "Series BB Preferred Stock"), and the initial number of shares constituting such series shall be 20,000,000, which number may be increased or decreased (but not below the number of shares then outstanding) from time to time by the Board of Directors. The Series BB Preferred Stock shall rank prior to each of the Common Stock, the Series B Preferred Stock and the ESOP Preferred

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Stock with respect to the payment of dividends and the distribution of assets.

B. Dividend Rights.

(1) The holders of shares of Series BB Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, out of funds legally available therefor, cumulative preferential cash dividends, accruing from January 1, 1998, at the annual rate of \$2.50 per share, and no more, payable quarterly on the first day of January, April, July and October of each year (each of the quarterly periods ending on the last day of March, June, September and December being hereinafter referred to as a "dividend period"). Dividends on the Series BB Preferred Stock shall first become payable on the first day of January, April, July or October, as the case may be, next following the date of issuance; provided, however, that if the first dividend period ends within 20 days of the date of issuance, such initial dividend shall be payable at the completion of the first full dividend period.

(2) Dividends on shares of Series BB Preferred Stock shall be cumulative from January 1, 1998, whether or not there shall be funds legally available for the payment thereof. Accumulations of dividends on the Series BB Preferred Stock shall not bear interest. The Corporation shall not (i) declare or pay or set apart for payment any dividends or distributions on any stock ranking as to dividends junior to the Series BB Preferred Stock (other than dividends paid in shares of such junior stock) or (ii) make any purchase or redemption of, or any sinking fund payment for the purchase or redemption of, any stock ranking as to dividends junior to the Series BB Preferred Stock (other than a purchase or redemption made by issue or delivery of such junior stock) unless all dividends payable on all outstanding shares of Series BB Preferred Stock for all past dividend periods shall have been paid in full or declared and a sufficient sum set apart for payment thereof; provided, however, that any moneys theretofore deposited in any sinking fund with respect to any preferred stock of the Corporation in compliance with the provisions of such sinking fund may thereafter be applied to the purchase or redemption of such preferred stock in accordance with the terms of such sinking fund regardless of whether at the time of such application all dividends payable on all outstanding shares of Series BB Preferred Stock for all past dividend periods shall have been paid in full or declared and a sufficient sum set apart for payment thereof.

(3) All dividends declared on shares of Series BB Preferred Stock and any other class of preferred stock or series thereof ranking on a parity as to dividends with the Series BB Preferred Stock shall be declared pro rata, so that the amounts of dividends declared on the Series BB Preferred Stock and such other preferred stock for the same dividend period, or for the dividend period of the Series BB Preferred Stock ending within the dividend period of such other stock, shall, in all cases, bear to each other the same ratio that accrued dividends on the shares of Series BB Preferred Stock and such other stock bear to

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each other.

C. Liquidation Preference.

(1) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the holders of Series BB Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to shareholders an amount equal to \$25 per share plus an amount equal to accrued and unpaid dividends thereon to and including the date of such distribution, and no more, before any distribution shall be made to the holders of any class of stock of the Corporation ranking junior to the Series BB Preferred Stock as to the distribution of assets.

(2) In the event the assets of the Corporation available for distribution to shareholders upon any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to the Series BB Preferred Stock and any other shares of preferred stock of the Corporation ranking on a parity with the Series BB Preferred Stock as to the distribution of assets, the holders of Series BB Preferred Stock and the holders of such other preferred stock shall share ratably in any distribution of assets of the Corporation in proportion to the full respective preferential amounts to which they are entitled.

(3) The merger or consolidation of the Corporation into or with any other corporation, the merger or consolidation of any other corporation into or with the Corporation or the sale of the assets of the Corporation substantially as an entirety shall not be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this paragraph C.

D. Redemption.

(1) The Corporation, at its option, may redeem all or any shares of the Series BB Preferred Stock at any time at a redemption price (the "Redemption Price") consisting of the sum of (i) \$25 per share and (ii) an amount equal to accrued and unpaid dividends thereon to and including the date of redemption.

(2) If less than all the outstanding shares of Series BB Preferred Stock are to be redeemed, the shares to be redeemed shall be selected pro rata as nearly as practicable or by lot, as the Board of Directors may determine.

(3) Notice of any redemption shall be given by first class mail, postage prepaid, mailed not less than 60 nor more than 90 days prior to the date fixed for redemption to the holders of record of the shares of Series BB Preferred Stock to be redeemed, at their respective addresses appearing on the books of the Corporation. Notice so mailed shall be conclusively presumed to have been duly given whether or not actually received. Such notice shall state: (1) the date fixed for redemption; (2) the Redemption Price; (3) the right of the holders of Series BB Preferred Stock to convert such stock into Common Stock until the

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close of business on the 15th day prior to the redemption date (or the next succeeding business day, if the 15th day is not a business day); (4) if less than all the shares held by such holder are to be redeemed, the number of shares to be redeemed from such holder; and (5) the place(s) where certificates for such shares are to be surrendered for payment of the Redemption Price. If such notice is mailed as aforesaid, and if on or before the date fixed for redemption funds sufficient to redeem the shares called for redemption are set aside by the Corporation in trust for the account of the holders of the shares to be redeemed, notwithstanding the fact that any certificate for shares called for redemption shall not have been surrendered for cancellation, on and after the redemption date the shares represented thereby so called for redemption shall be deemed to be no longer outstanding, dividends thereon shall cease to accrue, and all rights of the holders of such shares as shareholders of the corporation shall cease, except the right to receive the Redemption Price, without interest, upon surrender of the certificate(s) representing such shares. Upon surrender in accordance with the aforesaid notice of the certificate(s) for any shares so redeemed (duly endorsed or accompanied by appropriate instruments of transfer, if so required by the Corporation in such notice), the holders of record of such shares shall be entitled to receive the Redemption Price, without interest.

(4) At the option of the Corporation, if notice of redemption is mailed as aforesaid, and if prior to the date fixed for redemption funds sufficient to pay in full the Redemption Price are deposited in trust, for the account of the holders of the shares to be redeemed, with a bank or trust company named in such notice doing business in the Borough of Manhattan, the City of New York, State of New York or the City of Charlotte, State of North Carolina and having capital, surplus and undivided profits of at least \$3 million, which bank or trust company also may be the Transfer Agent and/or Paying Agent for the Series BB Preferred Stock, notwithstanding the fact that any certificate for shares called for redemption shall not have been surrendered for cancellation, on and after such date of deposit the shares represented thereby so called for redemption shall be deemed to be no longer outstanding, and all rights of the holders of such shares as shareholders of the Corporation shall cease, except the right of the holders thereof to convert such shares in accordance with the provisions of paragraph F at any time prior to the close of business on the 15th day prior to the redemption date (or the next succeeding business day, if the 15th day is not a business day), and the right of the holders thereof to receive out of the funds so deposited in trust the Redemption Price, without interest, upon surrender of the certificate(s) representing such shares. Any funds so deposited with such bank or trust company in respect of shares of Series BB Preferred Stock converted before the close of business on the 15th day prior to the redemption date (or the next succeeding business day, if the 15th day is not a business day) shall be returned to the Corporation upon such conversion. Any funds so deposited with such a bank or trust company which shall remain unclaimed by the holders of shares called for redemption at the end of six years after the



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redemption date shall be repaid to the Corporation, on demand, and thereafter the holder of any such shares shall look only to the Corporation for the payment, without interest, of the Redemption Price.

(5) Any provisions of paragraph D or E to the contrary notwithstanding, in the event that any quarterly dividend payable on the Series BB Preferred Stock shall be in arrears and until all such dividends in arrears shall have been paid or declared and set apart for payment, the Corporation shall not redeem any shares of Series BB Preferred Stock unless all outstanding shares of Series BB Preferred Stock are simultaneously redeemed and shall not purchase or otherwise acquire any shares of Series BB Preferred Stock except in accordance with a purchase offer made by the Corporation on the same terms to all holders of record of Series BB Preferred Stock for the purchase of all outstanding shares thereof.

E. Purchase by the Corporation.

(1) Except as provided in paragraph D(5), the Corporation shall be obligated to purchase shares of Series BB Preferred Stock tendered by the holder thereof for purchase hereunder, at a purchase price consisting of the sum of (i) \$25 per share and (ii) an amount equal to accrued and unpaid dividends thereon to and including the date of purchase. In order to exercise his right to require the Corporation to purchase his shares of Series BB Preferred Stock, the holder thereof shall surrender the Certificate(s) therefor duly endorsed if the Corporation shall so require or accompanied by appropriate instruments of transfer satisfactory to the Corporation, at the office of the Transfer Agent(s) for the Series BB Preferred Stock, or at such other office as may be designated by the Corporation, together with written notice that such holder irrevocably elects to sell such shares to the Corporation. Shares of Series BB Preferred Stock shall be deemed to have been purchased by the Corporation immediately prior to the close of business on the date such shares are tendered for sale to the Corporation and notice of election to sell the same is received by the Corporation in accordance with the foregoing provisions. As of such date the shares so tendered for sale shall be deemed to be no longer outstanding, dividends thereon shall cease to accrue and all rights of the holder of such shares as a shareholder of the Corporation shall cease, except the right to receive the purchase price.

F. Conversion Rights.

The holders of shares of Series BB Preferred Stock shall have the right, at their option, to convert such shares into shares of Common Stock on the following terms and conditions:

(1) Shares of Series BB Preferred Stock shall be convertible at any time into fully paid and nonassessable shares of Common Stock (calculated as to each conversion to the nearest 1/1,000 of a share) at the initial rate of 6.17215 shares of Common Stock for

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each share of Series BB Preferred Stock surrendered for conversion (the "Conversion Rate"). The Conversion Rate shall be subject to adjustment from time to time as hereinafter provided. No payment or adjustment shall be made on account of any accrued and unpaid dividends on shares of Series BB Preferred Stock surrendered for conversion prior to the record date for the determination of shareholders entitled to such dividends or on account of any dividends on the Common Stock issued upon such conversion subsequent to the record date for the determination of shareholders entitled to such dividends. If any shares of Series BB Preferred Stock shall be called for redemption, the right to convert the shares designated for redemption shall terminate at the close of business on the 15th day prior to the redemption date (or the next succeeding business day, if the 15th day is not a business day) unless default be made in the payment of the Redemption Price. In the event of default in the payment of the Redemption Price, the right to convert the shares designated for redemption shall terminate at the close of business on the business day immediately preceding the date that such default is cured.

(2) In order to convert shares of Series BB Preferred Stock into Common Stock, the holder thereof shall surrender the certificate(s) therefor, duly endorsed if the Corporation shall so require, or accompanied by appropriate instruments of transfer satisfactory to the Corporation, at the office of the Transfer Agent(s) for the Series BB Preferred Stock, or at such other office as may be designated by the Corporation, together with written notice that such holder irrevocably elects to convert such shares. Such notice shall also state the name(s) and address(es) in which such holder wishes the certificate(s) for the shares of Common Stock issuable upon conversion to be issued. As soon as practicable after receipt of the certificate(s) representing the shares of Series BB Preferred Stock to be converted and the notice of election to convert the same, the Corporation shall issue and deliver at said office a certificate or certificates for the number of whole shares of Common Stock issuable upon conversion of the shares of Series BB Preferred Stock surrendered for conversion, together with a cash payment in lieu of any fraction of a share, as hereinafter provided, to the person(s) entitled to receive the same. Shares of Series BB Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the date such shares are surrendered for conversion and notice of election to convert the same is received by the Corporation in accordance with the foregoing provisions, and the person(s) entitled to receive the Common Stock issuable upon such conversion shall be deemed for all purposes as record holder(s) of such Common Stock as of such date.

(3) No fractional shares of Common Stock shall be issued upon conversion of any shares of Series BB Preferred Stock. If more than one share of Series BB Preferred Stock is surrendered at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares so surrendered. If the conversion of any shares of Series BB Preferred Stock results in a fractional

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share of Common Stock, the Corporation shall pay cash in lieu thereof in an amount equal to such fraction multiplied times the closing price of the Common Stock on the date on which the shares of Series BB Preferred Stock were duly surrendered for conversion, or if such date is not a trading date, on the next succeeding trading date. The closing price of the Common Stock for any day shall mean the last reported sales price regular way on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, on the New York Stock Exchange, or, if the Common Stock is not then listed on such Exchange, on the principal national securities exchange on which the Common Stock is listed for trading, or, if not then listed for trading on any national securities exchange, the average of the closing bid and asked prices of the Common Stock as furnished by the National Quotation Bureau, Inc., or if the National Quotation Bureau, Inc. ceases to furnish such information, by a comparable independent securities quotation service.

(4) In the event the Corporation shall at any time (i) pay a dividend or make a distribution to holders of Common Stock in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a larger number of shares, or (iii) combine its outstanding shares of Common Stock into a smaller number of shares, the Conversion Rate in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision or combination shall be adjusted so that the holder of any shares of Series BB Preferred Stock surrendered for conversion after such record date or effective date shall be entitled to receive the number of shares of Common Stock which he would have owned or have been entitled to receive immediately following such record date or effective date had such shares of Series BB Preferred Stock been converted immediately prior thereto.

(5) Whenever the Conversion Rate shall be adjusted as herein provided (i) the Corporation shall forthwith keep available at the office of the Transfer Agent(s) for the Series BB Preferred Stock a statement describing in reasonable detail the adjustment, the facts requiring such adjustment and the method of calculation used; and (ii) the Corporation shall cause to be mailed by first class mail, postage prepaid, as soon as practicable to each holder of record of shares of Series BB Preferred Stock a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate.

(6) In the event of any consolidation of the Corporation with or merger of the Corporation into any other corporation (other than a merger in which the Corporation is the surviving corporation) or a sale of the assets of the Corporation substantially as an entirety, the holder of each share of Series BB Preferred Stock shall have the right, after such consolidation, merger or sale to convert such share into the number and kind of shares of stock or other securities and the amount and kind of property receivable upon such consolidation, merger or sale by a holder of the number of shares of Common Stock issuable upon conversion of such share of Series BB Preferred Stock immediately prior to such

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consolidation, merger or sale. Provision shall be made for adjustments in the Conversion Rate which shall be as nearly equivalent as may be practicable to the adjustments provided for in paragraph F(4). The provisions of this paragraph F(6) shall similarly apply to successive consolidations, mergers and sales.

(7) The Corporation shall pay any taxes that may be payable in respect of the issuance of shares of Common Stock upon conversion of shares of Series BB Preferred Stock, but the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance of shares of Common Stock in a name other than that in which the shares of Series BB Preferred Stock so converted are registered, and the Corporation shall not be required to issue or deliver any such shares unless and until the person(s) requesting such issuance shall have paid to the Corporation the amount of any such taxes, or shall have established to the satisfaction of the Corporation that such taxes have been paid.

(8) The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock the full number of shares of Common Stock issuable upon the conversion of all shares of Series BB Preferred Stock then outstanding.

(9) In the event that:

(i) The Corporation shall declare a dividend or any other distribution on its Common Stock, payable otherwise than in cash out of retained earnings; or

(ii) The Corporation shall authorize the granting to the holders of its Common Stock of rights to subscribe for or purchase any shares of capital stock of any class or of any other rights; or

(iii) The Corporation shall propose to effect any consolidation of the Corporation with or merger of the Corporation with or into any other corporation or a sale of the assets of the company substantially as an entirety which would result in an adjustment under paragraph F(6),

the Corporation shall cause to be mailed to the holders of record of Series BB Preferred Stock at least 20 days prior to the applicable date hereinafter specified a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined or (y) the date on which such consolidation, merger or sale is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such consolidation, merger or sale. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, consolidation, merger or sale.

G. Voting Rights.

Holders of Series BB Preferred Stock shall have no voting rights except as required by law and as follows: in the event that any quarterly dividend payable on the Series BB Preferred Stock is in arrears, the holders of Series BB Preferred Stock shall be entitled to vote together with the holders of Common Stock at the Corporation's next meeting of shareholders and at each subsequent meeting of shareholders unless all dividends in arrears have been paid or declared and set apart for payment prior to the date of such meeting. For the purpose of this paragraph G, each holder of Series BB Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which his Series BB Preferred Stock is then convertible.

H. Reacquired Shares.

Shares of Series BB Preferred Stock converted, redeemed, or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

I. No Sinking Fund.

Shares of Series BB Preferred Stock are not subject to the operation of a sinking fund.

4. The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

5. No holder of any stock of the Corporation of any class now or hereafter authorized shall have any preemptive right to purchase, subscribe for, or otherwise acquire any shares of stock of the Corporation of any class now or hereafter authorized, or any securities exchangeable for or convertible into any such shares, or any warrants or other instruments evidencing rights or options to subscribe for, purchase or otherwise acquire any such shares whether such shares, securities, warrants or other instruments be unissued, or issued and thereafter acquired by the Corporation.

6. To the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation, its shareholders or otherwise for monetary damage for breach of his duty as a director. Any repeal or modification of this Article shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

7. In furtherance and not in limitation of the powers conferred

by law, the Board of Directors of the Corporation is expressly authorized and empowered to make, alter and repeal the Bylaws of the Corporation by a majority vote at any regular or special meeting of the Board of Directors or by written consent, subject to the power of the stockholders of the Corporation to alter or repeal any Bylaws made by the Board of Directors.

8. The Corporation reserves the right at any time from time to time to amend or repeal any provision contained in this Certificate of Incorporation, and to add any other provisions authorized by the laws of the State of Delaware at the time in force; and all rights, preferences and privileges conferred upon stockholders, directors or any other persons by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article.

9. Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

10. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation or may be effected by consent in writing in lieu of a meeting of such stockholders only if consents are signed by all stockholders of the Corporation entitled to vote on such action.

IN WITNESS WHEREOF, BankAmerica Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Hugh L. McColl, Jr., its Chairman of the Board and Chief Executive Officer, and attested to by James W. Kiser, its Secretary, this 28th day of April, 1999.

BANKAMERICA CORPORATION

By: /s/ Hugh L. McColl, Jr.  
Hugh L. McColl, Jr.  
Chairman of the Board and Chief Executive Officer

ATTEST:

By: /s/ James W. Kiser  
James W. Kiser  
Secretary

CERTIFICATE OF AMENDMENT

OF

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

BANK OF AMERICA CORPORATION

Bank of America Corporation, a Delaware corporation (the "Corporation"), does hereby certify as follows:

FIRST: That at a meeting of the Board of Directors of the Corporation, resolutions were duly adopted setting forth a proposed amendment of the Amended and Restated Certificate of Incorporation of the Corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

RESOLVED, that Article 3 of the Amended and Restated Certificate of Incorporation of the Corporation be amended by changing the number of shares of stock the Corporation is authorized to issue, so that, as amended, the first sentence of said Article 3 shall be and read as follows:

"3. The number of shares, par value \$.01 per share, the Corporation is authorized to issue is Seven Billion Six Hundred Million (7,600,000,000), divided into the following classes:

<u>Class</u>	<u>Number of Shares</u>
Common	7,500,000,000
Preferred	100,000,000."

The balance of said Article 3 shall remain unchanged.

SECOND: That said amendment was duly adopted in accordance with the provisions of Section 242 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by a duly authorized officer on this 26th day of March, 2004.

By: /s/ James H. Hance, Jr.

Name: James H. Hance, Jr.

Title: Vice Chairman and Chief Financial Officer

**CERTIFICATE OF DESIGNATION**  
**OF**  
**FIXED/ADJUSTABLE RATE CUMULATIVE**  
**PREFERRED STOCK**

**OF**  
**Bank of America Corporation**

(Pursuant to Section 151 of the Delaware Corporation Law)

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as required by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on January 28, 2004:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors in accordance with the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, without par value (the "Preferred Stock") and hereby states the designation and number thereof and fixes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

(a) Designation. The designation of the series of Preferred Stock shall be "Fixed/Adjustable Rate Cumulative Preferred Stock" (hereinafter called this "Series") and the number of shares constituting this Series is Eight Hundred Five Thousand (805,000).

(b) Dividend Rate.

(1) The holders of shares of this Series shall be entitled to receive dividends thereon at a rate of 6.60% per annum computed on the basis of an issue price thereof of \$250 per share, and no more, payable quarterly out of the funds of the Corporation legally available for the payment of dividends. Such dividends shall be cumulative from the date of original issue of such shares and shall be payable, when, as and if declared by the Board, on January 1, April 1, July 1 and October 1 of each year, commencing July 1, 2004 (a "Dividend Payment Date") through April 1, 2006. Each such dividend shall be paid to the holders of record of shares of this Series as they appear on the stock register of the Corporation on such record date, not exceeding 30 days preceding the payment date thereof, as shall be fixed by the Board. Dividends on account of arrears for any past quarters may be declared and paid at any time, without reference to any regular dividend



payment date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the Board.

After April 1, 2006, dividends on this Series will be payable quarterly, as, if and when declared by the Board of Directors or a duly authorized committee thereof on each Dividend Payment Date at the Applicable Rate from time to time in effect. The Applicable Rate per annum for any dividend period beginning on or after April 1, 2006 will be equal to .50% plus the highest of the Treasury Bill Rate, the Ten Year Constant Maturity Rate and the Thirty Year Constant Maturity Rate (each as defined below under "Adjustable Rate Dividends"), as determined in advance of such dividend period. The Applicable Rate per annum for any dividend period beginning on or after April 1, 2006 will not be less than 7.0% nor greater than 13.0% (without taking into account any adjustments as described below in subsection (3) of this Section (b)).

(2) Except as provided below in this paragraph, the "Applicable Rate" per annum for any dividend period beginning on or after April 1, 2006 will be equal to .50% plus the Effective Rate (as defined below), but not less than 7.0% nor greater than 13.0% (without taking into account any adjustments as described below in subsection (3) of this Section (b)). The "Effective Rate" for any dividend period beginning on or after April 1, 2006 will be equal to the highest of the Treasury Bill Rate, the Ten Year Constant Maturity Rate and the Thirty Year Constant Maturity Rate (each as defined below) for such dividend period. In the event that the Corporation determines in good faith that for any reason:

(i) any one of the Treasury Bill Rate, the Ten Year Constant Maturity Rate or the Thirty Year Constant Maturity Rate cannot be determined for any dividend period, then the Effective Rate for such dividend period will be equal to the higher of whichever two of such rates can be so determined;

(ii) only one of the Treasury Bill Rate, the Ten Year Constant Maturity Rate or the Thirty Year Constant Maturity Rate can be determined for any dividend period, then the Effective Rate for such dividend period will be equal to whichever such rate can be so determined; or

(iii) none of the Treasury Bill Rate, the Ten Year Constant Maturity Rate or the Thirty Year Constant Maturity Rate can be determined for any dividend period, then the Effective Rate for the preceding dividend period will be continued for such dividend period.

Except as described below in this paragraph, the "Treasury Bill Rate" for each dividend period will be the arithmetic average of the two most recent weekly per annum market discount rates (or the one weekly per annum market discount rate, if only one such rate is published during the relevant Calendar Period (as defined below)) for three-month U.S. Treasury bills, as published weekly by the Federal Reserve Board (as defined below) during the Calendar Period immediately preceding the last ten calendar days preceding the dividend period for which the dividend rate on this Series is being determined. In the event that the Federal Reserve Board does not publish such a weekly per annum market discount rate during any such Calendar Period, then the Treasury Bill Rate for such dividend period will be the arithmetic average of the two most recent weekly per annum market discount rates (or the one weekly per annum market discount rate, if only one such rate is published during the relevant Calendar Period) for three-month U.S. Treasury bills, as published weekly during such Calendar Period by any Federal Reserve Bank or by any U.S. Government department or agency selected by the Corporation. In the event that a per annum market discount rate for three-month U.S. Treasury bills is not published by the Federal Reserve Board or by any Federal Reserve Bank or by any U.S. Government department or agency during

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such Calendar Period, then the Treasury Bill Rate for such dividend period will be the arithmetic average of the two most recent weekly per annum market discount rates (or the one weekly per annum market discount rate, if only one such rate is published during the relevant Calendar Period) for all of the U.S. Treasury bills then having remaining maturities of not less than 80 nor more than 100 days, as published during such Calendar Period by the Federal Reserve Board or, if the Federal Reserve Board does not publish such rates, by any Federal Reserve Bank or by any U.S. Government Department or agency selected by the Corporation. In the event that the Corporation determines in good faith that for any reason no such U.S. Treasury Bill Rates are published as provided above during such Calendar Period, then the Treasury Bill Rate for such dividend period will be the arithmetic average of the per annum market discount rates based upon the closing bids during such Calendar Period for each of the issues of marketable non-interest-bearing U.S. Treasury securities with a remaining maturity of not less than 80 nor more than 100 days from the date of each such quotation, as chosen and quoted daily for each business day in New York City (or less frequently if daily quotations are not generally available) to the Corporation by at least three recognized dealers in U.S. Government securities selected by the Corporation. In the event that the Corporation determines in good faith that for any reason the Corporation cannot determine the Treasury Bill Rate for any dividend period as provided above in this paragraph, the Treasury Bill Rate for such dividend period will be the arithmetic average of the per annum market discount rates based upon the closing bids during such Calendar Period for each of the issues of marketable interest-bearing U.S. Treasury securities with a remaining maturity of not less than 80 nor more than 100 days, as chosen and quoted daily for each business day in New York City (or less frequently if daily quotations are not generally available) to the Corporation by at least three recognized dealers in U.S. Government securities selected by the Corporation.

Except as described below in this paragraph, the “Ten Year Constant Maturity Rate” for each dividend period will be the arithmetic average of the two most recent weekly per annum Ten Year Average Yields (as defined below) (or the one weekly per annum Ten Year Average Yield, if only one such yield is published during the relevant Calendar Period), as published weekly by the Federal Reserve Board during the Calendar Period immediately preceding the last ten calendar days preceding the dividend period for which the dividend rate on this Series is being determined. In the event that the Federal Reserve Board does not publish such a weekly per annum Ten Year Average Yield during such Calendar Period, then the Ten Year Constant Maturity Rate for such dividend period will be the arithmetic average of the two most recent weekly per annum Ten Year Average Yields (or the one weekly per annum Ten Year Average Yield, if only such yield is published during the relevant Calendar Period), as published weekly during such Calendar Period by any Federal Reserve Bank or by any U.S. Government department or agency selected by the Corporation. In the event that a per annum Ten Year Average Yield is not published by the Federal Reserve Board or by any Federal Reserve Bank or by any U.S. Government department or agency during such Calendar Period, then the Ten Year Constant Maturity Rate for such dividend period will be the arithmetic average of the two most recent weekly per annum average yields to maturity (or the one weekly per annum average yield to maturity, if only one such yield is published during the relevant Calendar Period) for all of the actively traded marketable U.S. Treasury fixed interest rate securities (other than Special Securities (as defined below)) then having remaining maturities of not less than eight nor more than twelve years, as published during such Calendar Period by the Federal Reserve Board or, if the Federal Reserve Board does not publish such yields, by any Federal Reserve Bank or by any U.S. Government department or agency selected by the

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Corporation. In the event that the Corporation determines in good faith that for any reason the Corporation cannot determine the Ten Year Constant Maturity Rate for any dividend period as provided above in this paragraph, then the Ten Year Constant Maturity Rate for such dividend period will be the arithmetic average of the per annum average yields to maturity based upon the closing bids during such Calendar Period for each of the issues of actively traded marketable U.S. Treasury fixed interest rate securities (other than Special Securities) with a final maturity date not less than eight nor more than twelve years from the date of each such quotation, as chosen and quoted daily for each business day in New York City (or less frequently if daily quotations are not generally available) to the Corporation by at least three recognized dealers in U.S. Government securities selected by the Corporation.

Except as described below in this paragraph, the "Thirty Year Constant Maturity Rate" for each dividend period will be the arithmetic average of the two most recent weekly per annum Thirty Year Average Yields (as defined below) (or the one weekly per annum Thirty Year Yield, if only one such yield is published during the relevant Calendar Period), as published weekly by the Federal Reserve Board during the Calendar Period immediately preceding the last ten calendar days preceding the dividend period for which the dividend rate on this Series is being determined. In the event that the Federal Reserve Board does not publish such a weekly per annum Thirty Year Average Yield during such Calendar Period, then the Thirty Year Constant Maturity Rate for such dividend period will be the arithmetic average of the two most recent weekly per annum Thirty Year Average Yields (or the one weekly per annum Thirty Year Average Yield, if only one such yield is published during the relevant Calendar Period), as published weekly during such Calendar Period by any Federal Reserve Bank or by any U.S. Government department or agency selected by the Corporation. In the event that a per annum Thirty Year Average Yield is not published by the Federal Reserve Board or by any Federal Reserve Bank or by any U.S. Government department or agency during such Calendar Period, then the Thirty Year Constant Maturity Rate for such dividend period will be the arithmetic average of the two most recent weekly per annum average yields to maturity (or the one weekly per annum average yield to maturity, if only one such yield is published during the relevant Calendar Period) for all of the actively traded marketable U.S. Treasury fixed interest rate securities (other than Special Securities) then having remaining maturities of not less than twenty-eight nor more than thirty years, as published during such Calendar Period by the Federal Reserve Board or, if the Federal Reserve Board does not publish such yields, by any Federal Reserve Bank or by any U.S. Government department or agency selected by the Corporation. In the event that the Corporation determines in good faith that for any reason the Corporation cannot determine the Thirty Year Constant Maturity Rate for any dividend period as provided above in this paragraph, then the Thirty Year Constant Maturity Rate for such dividend period will be the arithmetic average of the per annum average yields to maturity based upon the closing bids during such Calendar Period for each of the issues of actively traded marketable U.S. Treasury fixed interest rate securities (other than Special Securities) with a final maturity date not less than twenty-eight nor more than thirty years from the date of such quotation, as chosen and quoted daily for each business day in New York City (or less frequently if daily quotations are not generally available) to the Corporation by at least three recognized dealers in U.S. Government securities selected by the Corporation.

The Treasury Bill Rate, the Ten Year Constant Maturity Rate and the Thirty Year Constant Maturity Rate will each be rounded to the nearest five hundredths of a percent.

The Applicable Rate with respect to each dividend period beginning on or after April 1, 2006 will be calculated as promptly as practicable by the Corporation according to the appropriate method described above. The Corporation will cause notice of each Applicable Rate to be enclosed with the dividend payment checks next mailed to the holders of this Series.

As used above, the term "Calendar Period" means a period of fourteen calendar days; the term "Federal Reserve Board" means the Board of Governors of the Federal Reserve System; the term "Special Securities" means securities which can, at the option of the holder, be surrendered at face value in payment of any Federal estate tax or which provide tax benefits to the holder and are priced to reflect such tax benefits or which were originally issued at a deep or substantial discount; the term "Ten Year Average Yield" means the average yield to maturity for actively traded marketable U.S. Treasury fixed interest rate securities (adjusted to constant maturities of ten years); and the term "Thirty Year Average Yield" means the average yield to maturity for actively traded marketable U.S. Treasury fixed interest rate securities (adjusted to constant maturities of thirty years.)

(3) If one or more amendments to the Internal Revenue Code of 1986, as amended (the "Code"), are enacted that change the percentage of the dividends received deduction (currently 70%) as specified in Section 243(a)(1) of the Code or any successor provision (the "Dividends Received Percentage"), the amount of each dividend payable per share of this Series for dividend payments made on or after the date of enactment of such change shall be adjusted by multiplying the amount of the dividend payable determined as described above (before adjustment) by a factor which shall be the number determined in accordance with the following formula (the "DRD Formula"), and rounding the result to the nearest cent:

$$1 - .35(1 - .70)/1 - .35(1 - \text{DRP})$$

For the purposes of the DRD Formula, "DRP" means the Dividends Received Percentage applicable to the dividend in question. No amendment to the Code, other than a change in the percentage of the dividends received deduction set forth in Section 243(a)(1) of the Code or any successor provision, will give rise to an adjustment. Notwithstanding the foregoing provisions, in the event that, with respect to any such amendment, the Corporation shall receive either an unqualified opinion of independent recognized tax counsel or a private letter ruling or similar form of authorization from the Internal Revenue Service to the effect that such an amendment would not apply to dividends payable on shares of this Series, then any such amendment shall not result in the adjustment provided for pursuant to the DRD Formula. The Corporation's calculation of the dividends payable as so adjusted and as certified accurate as to calculation and reasonable as to method by the independent certified public accountants then regularly engaged by the Corporation shall be final and not subject to review.

If any amendment to the Code which reduces the Dividends Received Percentage is enacted after a dividend payable on a Dividend Payment Date has been declared, the amount of dividend payable on such Dividend Payment Date will not be increased; but instead, an amount, equal to the excess of (x) the product of the dividends paid by the Corporation on such Dividend Payment Date and the DRD Formula (where the DRP used in the DRD Formula would be equal to the reduced Dividends Received Percentage) and (y) the dividends paid by the Corporation on such Dividend

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Payment Date, will be payable to holders of record on the next succeeding Dividend Payment Date in addition to any other amounts payable on such date.

(4) No full dividends shall be declared or paid or set apart for payment on the Preferred Stock of any series ranking, as to dividends, on a parity with or junior to this Series for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on this Series for all dividend payment periods terminating on or prior to the date of payment of such full cumulative dividends. When dividends are not paid in full, as aforesaid, upon the shares of this Series and any other preferred stock ranking on a parity as to dividends with this Series, all dividends declared upon shares of this Series and any other class or series of preferred stock of the Corporation ranking on a parity as to dividends with this Series shall be declared pro rata so that the amount of dividends declared per share on this Series and such other preferred stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of this Series and such other preferred stock bear to each other. Holders of shares of this Series shall not be entitled to any dividend, whether payable in cash, property or stocks, in excess of full cumulative dividends, as herein provided, on this Series. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on this Series which may be in arrears.

(5) So long as any shares of this Series are outstanding, no dividend (other than a dividend in Common Stock or in any other stock ranking junior to this Series as to dividends and upon liquidation and other than as provided in subsection (4) of this Section (b)) shall be declared or paid or set aside for payment or other distribution declared or made upon the Common Stock or upon any other stock ranking junior to or on a parity with this Series as to dividends or upon liquidation, nor shall any Common Stock nor any other stock of the Corporation ranking junior to or on a parity with this Series as to dividends or upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such stock) by the Corporation (except by conversion into or exchange for stock of the Corporation ranking junior to this Series as to dividends and upon liquidation) unless, in each case, the full cumulative dividends on all outstanding shares of this Series shall have been paid for all past dividend payment periods.

(6) Dividends payable on this Series for any period shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

(c) Redemption.

(1) (A) The shares of this Series shall not be redeemable prior to April 1, 2006. On and after April 1, 2006, the Corporation, at its option, may redeem shares of this Series, in whole or in part, at any time or from time to time, at a redemption price or \$250 per share, plus accrued and unpaid dividends thereon to the date fixed for redemption.

(B) In the event that fewer than all the outstanding shares of this Series are to be redeemed pursuant to subsection (1)(A), the number of shares to be redeemed shall be determined by the Board and the shares to be redeemed shall be determined by lot or pro rata as may be determined

by the Board or by any other method as may be determined by the Board in its sole discretion to be equitable.

(2) (A) Notwithstanding subsection (1) above, if the Dividends Received Percentage is equal to or less than 40% and, as a result, the amount of dividends on the shares of this Series payable on any Dividend Payment Date will be or is adjusted upwards as described in Section (b)(2) above, the Corporation, at its Option, may redeem all, but not less than all, of the outstanding shares of this Series; provided, that within sixty days of the date on which an amendment to the Code is enacted which reduces the Dividends Received Percentage to 40% or less, the Corporation sends notice to holders of shares of this Series of such redemption in accordance with subsection (3) below.

(B) Any redemption of this Series in accordance with this subsection (2) shall be at the applicable redemption price set forth in the following table, in each case plus accrued and unpaid dividends (whether or not declared) thereon to the date fixed for redemption, including any changes in dividends payable due to changes in the Dividends Received Percentage.

<u>Redemption Period</u>	<u>Redemption Price Per Share</u>	<u>Redemption Price Per Depository Share</u>
April 2, 2004 to March 31, 2005	252.50	50.50
April 1, 2005 to March 31, 2006	251.25	50.25
On or after April 1, 2006	250.00	50.00

(3) In the event the Corporation shall redeem shares of this Series pursuant to subsections (1) or (2) above, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (i) the redemption date; (ii) the number of shares of this Series to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on such redemption date.

(4) Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) dividends on the shares of this Series so called for redemption under either subsection (1) or (2) above shall cease to accrue, and said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. Upon surrender in accordance with said notice of the certificates for any shares so redeemed (properly endorsed or assigned for transfer, if the Board shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price. In case fewer than all the shares represented by

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any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

(5) Notwithstanding the foregoing provisions of this Section (c), if any dividends on this Series are in arrears, no shares of this Series shall be redeemed unless all outstanding shares of this Series are simultaneously redeemed, and the Corporation shall not purchase or otherwise acquire any shares of this Series; provided, however, that the foregoing shall not prevent the purchase or acquisition of shares of this Series pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of this Series.

(d) Liquidation Rights.

(1) Upon the dissolution, liquidation or winding up of the Corporation, the holders of the shares of this Series shall be entitled to receive and be paid out of the assets of the Corporation available for distribution to its stockholders, before any payment or distribution shall be made on the Common Stock or on any other class of stock ranking junior to the shares of this Series upon liquidation, the amount of \$250 per share, plus a sum equal to all dividends (whether or not earned or declared) on such shares accrued and unpaid thereon to the date of final distribution.

(2) Neither the sale of all or substantially all the property or business of the Corporation nor the merger or consolidation of the Corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the Corporation, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this Section (d).

(3) After the payment to the holders of the shares of this Series of the full preferential amounts provided for in this Section (d), the holders of this Series as such shall have no right or claim to any of the remaining assets of the Corporation.

(4) In the event the assets of the Corporation available for distribution to the holders of shares of this Series upon any dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such holders are entitled pursuant to paragraph (1) of this Section (d), no such distribution shall be made on account of any shares of any other class or series of Preferred Stock ranking on a parity with the shares of this Series upon such dissolution, liquidation or winding up unless proportionate distributive amounts shall be paid on account of the shares of this Series, ratably, in proportion to the full distributable amounts for which holders of all such parity shares are respectively entitled upon such dissolution, liquidation or winding up.

(e) Conversion or Exchange. The holders of shares of this Series shall not have any rights herein to convert such shares into or exchange such shares for shares of any other class or classes or of any other series of any class or classes of capital stock of the Corporation.

(f) Voting. The shares of this Series shall not have any voting powers, either general or special, except that:

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(1) Unless the vote or consent of the holders of a greater number of shares shall then be required by law, the consent of the holders of at least 66 2/3% of all of the shares of this Series at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of this Series shall vote together as a separate class, shall be necessary for authorizing, effecting or validating the amendment, alteration or repeal of any of the provisions of the Corporation's Amended and Restated Certificate of Incorporation or of any certificate amendatory thereof or supplemental thereto (including any Certificate of the Voting Powers, Designations, Preferences and Relative, Participating, Optional or Other Special Rights, and the Qualifications, Limitations or Restrictions thereof, or any similar document relating to any series of Preferred Stock) which would adversely affect the preferences, rights, powers or privileges of this Series;

(2) Unless the vote or consent of the holders of a greater number of shares shall then be required by law, the consent of the holders of at least 66 2/3% of all of the shares of this Series and all other series of Preferred Stock ranking on a parity with shares of this Series, either as to dividends or upon liquidation, at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of this Series and such other series of Preferred Stock shall vote together as a single class without regard to series, shall be necessary for authorizing, effecting, increasing or validating the creation, authorization or issue of any shares of any class of stock of the Corporation ranking prior to the shares of this Series as to dividends or upon liquidation, or the reclassification of any authorized stock of the Corporation into any such prior shares, or the creation, authorization or issue of any obligation or security convertible into or evidencing the right to purchase any such prior shares.

(3) If, at the time of any annual meeting of stockholders for the election of directors, a default in preference dividends on any series of the Preferred Stock or any other class or series of preferred stock of the Corporation (other than any other class or series of the Corporation's preferred stock expressly entitled to elect additional directors to the Board by a vote separate and distinct from the vote provided for in this paragraph (3) ("Voting Preferred")) shall exist, the number of directors constituting the Board shall be increased by two (without duplication of any increase made pursuant to the terms of any other class or series of the Corporation's preferred stock other than any Voting Preferred) and the holders of the Corporation's preferred stock of all classes and series (other than any such Voting Preferred) shall have the right at such meeting, voting together as a single class without regard to class or series, to the exclusion of the holders of Common Stock and the Voting Preferred, to elect two directors of the Corporation to fill such newly created directorships. Such right shall continue until there are no dividends in arrears upon shares of any class or series of the Corporation's preferred stock ranking prior to or on a parity with shares of this Series as to dividends (other than any Voting Preferred). Each director elected by the holders of shares of any series of the Preferred Stock or any other class or series of the Corporation's preferred stock in an election provided for by this paragraph (3) (herein called a "Preferred Director") shall continue to serve as such director for the full term for which he shall have been elected, notwithstanding that prior to the end of such term a default in preference dividends shall cease to exist. Any Preferred Director may be removed by, and shall not be removed except by, the vote of the holders of record of the outstanding shares of the Corporation's preferred stock entitled to have originally voted for such director's election, voting together as a single class without regard to class or series, at a meeting of the stockholders, or of the holders of



shares of the Corporation's preferred stock, called for that purpose. So long as a default in any preference dividends on any series of the Preferred Stock or any other class or series of preferred stock of the Corporation shall exist (other than any Voting Preferred) (A) any vacancy in the office of a Preferred Director may be filled (except as provided in the following clause (B)) by an instrument in writing signed by the remaining Preferred Director and filed with the Corporation and (B) in the case of the removal of any Preferred Director, the vacancy may be filled by the vote of the holders of the outstanding shares of the Corporation's preferred stock entitled to have originally voted for the removed director's election, voting together as a single class without regard to class or series, at the same meeting at which such removal shall be voted. Each director appointed as aforesaid shall be deemed for all purposes hereto to be a Preferred Director.

Whenever the term of office of the Preferred Directors shall end and a default in preference dividends shall no longer exist, the number of directors constituting the Board shall be reduced by two. For purposes hereof, a "default in preference dividends" on any series of the Preferred Stock or any other class or series of preferred stock of the Corporation shall be deemed to have occurred whenever the amount of accrued dividends upon such class or series of the Corporation's preferred stock shall be equivalent to six full quarterly dividends or more, and, having so occurred, such default shall be deemed to exist thereafter until, but only until, all accrued dividends on all such shares of the Corporation's preferred stock of each and every series then Outstanding (other than any Voting Preferred or shares of any class or series ranking junior to shares of this Series as to dividends) shall have been paid to the end of the last preceding quarterly dividend period.

(4) Without limiting the foregoing, under any circumstances in which the Series would have additional rights under Rhode Island law if the Corporation were incorporated under the Rhode Island Business Corporation Act (rather than the Delaware General Corporation Law), holders of shares of the Series shall be entitled to such rights, including, without limitation, voting rights under Chapter 7-1.1-55, voting and notice rights under Chapter 7-1.1-67 and dissenters' rights under Chapters 7-1.1-73 and 7-1.1-74 of the Rhode Island Business Corporation Act (as such Chapters may be amended from time to time).

(g) Reacquired Shares. Shares of this Series which have been issued and reacquired through redemption or purchase shall, upon compliance with an applicable provision of the Delaware General Corporation Law, have the status of authorized and unissued shares of Preferred Stock and may be reissued but only as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board.

(h) Relation to Existing Preferred Classes of Stock. Shares of this Series are equal in rank and preference with all other series of the Preferred Stock (other than the ESOP Convertible Preferred Stock, Series C) outstanding on the date of original issue of the shares of this Series and are senior in rank and preference to the Common Stock and the ESOP Convertible Preferred Stock, Series C of the Corporation.

(i) Relation to Other Preferred Classes of Stock. For purposes of this resolution, any stock of any class or classes of the Corporation shall be deemed to rank:

(1) prior to the shares of this Series, either as to dividends or upon liquidation, if the holders of such class or classes shall be entitled to the receipt of dividends or of amounts

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distributable upon dissolution, liquidation or winding up of the Corporation, as the case may be, in preference or priority to the holders of shares of this Series;

(2) on a parity with shares of this Series, either as to dividends or upon liquidation, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share or sinking fund provisions, if any, be different from those of this Series, if the holders of such stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, as the case may be, in proportion to their respective dividend rates or liquidation prices, without preference or priority, one over the other, as between the holders of such stock and the holders of shares of this Series; and

(3) junior to the shares of this Series, either as to dividends or upon liquidation, if such class shall be Common Stock or if the holders of shares of this Series shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, as the case may be, in preference or priority to the holders of shares of such class or classes.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be duly executed by James H. Hance, Jr., its Vice Chairman and Chief Financial Officer, and attested to by Rachel R. Cummings, its Corporate Secretary, and has caused the corporate seal to be affixed hereto, this 26th day of March, 2004.

BANK OF AMERICA CORPORATION

By: /s/ James H. Hance, Jr.  
Vice Chairman and Chief Financial Officer

ATTEST:

/s/ Rachel R. Cummings  
Corporate Secretary

(Corporate Seal)

**CERTIFICATE OF DESIGNATION**

**OF**

**6.75% PERPETUAL PREFERRED STOCK**

**OF**

**BANK OF AMERICA CORPORATION**

(Pursuant to Section 151 of the Delaware Corporation Law)

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as required by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on January 28, 2004:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors in accordance with the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, without par value (the "Preferred Stock") and hereby states the designation and number thereof and fixes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

(a) Designation. The designation of the series of Preferred Stock shall be "6.75% Perpetual Preferred Stock" (hereinafter called this "Series") and the number of shares constituting this Series is Six Hundred Ninety Thousand (690,000).

(b) Dividend Rate.

(1) The holders of shares of this Series shall be entitled to receive dividends thereon at a rate of 6.75% per annum computed on the basis of an issue price thereof of \$250 per share, and no more, payable quarterly out of the funds of the Corporation legally available for the payment of dividends. Such dividends shall be cumulative from the date of original issue of such shares and shall be payable, when, as and if declared by the Board, on January 15, April 15, July 15 and October 15 of each year, commencing April 15, 2004 (a "Dividend Payment Date"). Each such dividend shall be paid to the holders of record of shares of this Series as they appear on the stock register of the Corporation on such record date, not exceeding 30 days preceding the payment date

thereof, as shall be fixed by the Board. Dividends on account of arrears for any past quarters may be declared and paid at any time, without reference to any regular dividend payment date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the Board.

(2) If one or more amendments to the Internal Revenue Code of 1986, as amended (the "Code"), are enacted that change the percentage of the dividends received deduction (currently 70%) as specified in Section 243(a)(1) of the Code or any successor provision (the "Dividends Received Percentage"), the amount of each dividend payable per share of this Series for dividend payments made on or after the date of enactment of such change shall be adjusted by multiplying the amount of the dividend payable determined as described above (before adjustment) by a factor which shall be the number determined in accordance with the following formula (the "DRD Formula"), and rounding the result to the nearest cent:

$$1 - .35(1 - .70)/1 - .35(1 - \text{DRP})$$

For the purposes of the DRD Formula, "DRP" means the Dividends Received Percentage applicable to the dividend in question. No amendment to the Code, other than a change in the percentage of the dividends received deduction set forth in Section 243(a)(1) of the Code or any successor provision, will give rise to an adjustment. Notwithstanding the foregoing provisions, in the event that, with respect to any such amendment, the Corporation shall receive either an unqualified opinion of independent recognized tax counsel or a private letter ruling or similar form of authorization from the Internal Revenue Service to the effect that such an amendment would not apply to dividends payable on shares of this Series, then any such amendment shall not result in the adjustment provided for pursuant to the DRD Formula. The Corporation's calculation of the dividends payable as so adjusted and as certified accurate as to calculation and reasonable as to method by the independent certified public accountants then regularly engaged by the Corporation shall be final and not subject to review.

If any amendment to the Code which reduces the Dividends Received Percentage is enacted after a dividend payable on a Dividend Payment Date has been declared, the amount of dividend payable on such Dividend Payment Date will not be increased; but instead, an amount, equal to the excess of (x) the product of the dividends paid by the Corporation on such Dividend Payment Date and the DRD Formula (where the DRP used in the DRD Formula would be equal to the reduced Dividends Received Percentage) and (y) the dividends paid by the Corporation on such Dividend Payment Date, will be payable to holders of record on the next succeeding Dividend Payment Date in addition to any other amounts payable on such date.

(3) No full dividends shall be declared or paid or set apart for payment on the Preferred Stock of any series ranking, as to dividends, on a parity with or junior to this Series for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the

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payment thereof set apart for such payment on this Series for all dividend payment periods terminating on or prior to the date of payment of such full cumulative dividends. When dividends are not paid in full, as aforesaid, upon the shares of this Series and any other preferred stock ranking on a parity as to dividends with this Series, all dividends declared upon shares of this Series and any other class or series of preferred stock of the Corporation ranking on a parity as to dividends with this Series shall be declared pro rata so that the amount of dividends declared per share on this Series and such other preferred stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of this Series and such other preferred stock bear to each other. Holders of shares of this Series shall not be entitled to any dividend, whether payable in cash, property or stocks, in excess of full cumulative dividends, as herein provided, on this Series. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on this Series which may be in arrears.

(4) So long as any shares of this Series are outstanding, no dividend (other than a dividend in Common Stock or in any other stock ranking junior to this Series as to dividends and upon liquidation and other than as provided in subsection (3) of this Section (b)) shall be declared or paid or set aside for payment or other distribution declared or made upon the Common Stock or upon any other stock ranking junior to or on a parity with this Series as to dividends or upon liquidation, nor shall any Common Stock nor any other stock of the Corporation ranking junior to or on a parity with this Series as to dividends or upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such stock) by the Corporation (except by conversion into or exchange for stock of the Corporation ranking junior to this Series as to dividends and upon liquidation) unless, in each case, the full cumulative dividends on all outstanding shares of this Series shall have been paid for all past dividend payment periods.

(5) Dividends payable on this Series for any period shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

(c) Redemption.

(1) (A) The shares of this Series shall not be redeemable prior to April 15, 2006. On and after April 15, 2006, the Corporation, at its option, may redeem shares of this Series, in whole or in part, at any time or from time to time, at a redemption price of \$250 per share, plus accrued and unpaid dividends thereon to the date fixed for redemption.

(B) In the event that fewer than all the outstanding shares of this Series are to be redeemed pursuant to subsection (1)(A), the number of shares to be redeemed shall be determined by the Board and the shares to be redeemed shall be determined by lot or pro rata as may be determined by the Board or by any other method as may be determined by the Board in its sole discretion to be equitable.

(2) (A) Notwithstanding subsection (1) above, if the Dividends Received Percentage is equal to or less than 40% and, as a result, the amount of dividends on the shares of this Series payable on any Dividend Payment Date will be or is adjusted upwards as described in Section (b)(2) above, the Corporation, at its option, may redeem all, but not less than all, of the outstanding shares of this Series; provided, that within sixty days of the date on which an amendment to the Code is enacted which reduces the Dividends Received Percentage to 40% or less, the Corporation sends notice to holders of shares of this Series of such redemption in accordance with subsection (3) below.

(B) Any redemption of the Perpetual Preferred Stock in accordance with this subsection (2) shall be at the applicable redemption price set forth in the following table, in each case plus accrued and unpaid dividends (whether or not declared) thereon to the date fixed for redemption, including any changes in dividends payable due to changes in the Dividends Received Percentage.

<u>Redemption Period</u>	<u>Redemption Price Per Share</u>	<u>Redemption Price Per Depositary Share</u>
April 2, 2004 to April 14, 2004	253.75	50.75
April 15, 2004 to April 14, 2005	252.50	50.50
April 15, 2005 to April 14, 2006	251.25	50.25
On or after April 15, 2006	250.00	50.00

(3) In the event the Corporation shall redeem shares of this Series pursuant to subsections (1) or (2) above, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (i) the redemption date; (ii) the number of shares of this Series to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on such redemption date.

(4) Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) dividends on the shares of this Series so called for redemption under either subsection (1) or (2) above shall cease to accrue, and said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. Upon surrender in accordance with said notice of the certificates for any shares so redeemed (properly endorsed or assigned for transfer, if the Board shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price. In case fewer than all the shares represented by

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any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

(5) Notwithstanding the foregoing provisions of this Section (c), if any dividends on this Series are in arrears, no shares of this Series shall be redeemed unless all outstanding shares of this Series are simultaneously redeemed, and the Corporation shall not purchase or otherwise acquire any shares of this Series; provided, however, that the foregoing shall not prevent the purchase or acquisition of shares of this Series pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of this Series.

(d) Liquidation Rights.

(1) Upon the dissolution, liquidation or winding up of the Corporation, the holders of the shares of this Series shall be entitled to receive and be paid out of the assets of the Corporation available for distribution to its stockholders, before any payment or distribution shall be made on the Common Stock or on any other class of stock ranking junior to the shares of this Series upon liquidation, the amount of \$250 per share, plus a sum equal to all dividends (whether or not earned or declared) on such shares accrued and unpaid thereon to the date of final distribution.

(2) Neither the sale of all or substantially all the property or business of the Corporation nor the merger or consolidation of the Corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the Corporation, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this Section (d).

(3) After the payment to the holders of the shares of this Series of the full preferential amounts provided for in this Section (d), the holders of this Series as such shall have no right or claim to any of the remaining assets of the Corporation.

(4) In the event the assets of the Corporation available for distribution to the holders of shares of this Series upon any dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such holders are entitled pursuant to paragraph (1) of this Section (d), no such distribution shall be made on account of any shares of any other class or series of Preferred Stock ranking on a parity with the shares of this Series upon such dissolution, liquidation or winding up unless proportionate distributive amounts shall be paid on account of the shares of this Series, ratably, in proportion to the full distributable amounts for which holders of all such parity shares are respectively entitled upon such dissolution, liquidation or winding up.

(e) Conversion or Exchange. The holders of shares of this Series shall not have any rights herein to convert such shares into or exchange such shares for shares of any other class or classes or of any other series of any class or classes of capital stock of the Corporation.

(f) Voting. The shares of this Series shall not have any voting powers, either general or special, except that:

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(1) Unless the vote or consent of the holders of a greater number of shares shall then be required by law, the consent of the holders of at least 66 2/3% of all of the shares of this Series at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of this Series shall vote together as a separate class, shall be necessary for authorizing, effecting or validating the amendment, alteration or repeal of any of the provisions of the Corporation's Amended and Restated Certificate of Incorporation or of any certificate amendatory thereof or supplemental thereto (including any Certificate of the Voting Powers, Designations, Preferences and Relative, Participating, Optional or Other Special Rights, and the Qualifications, Limitations or Restrictions thereof, or any similar document relating to any series of Preferred Stock) which would adversely affect the preferences, rights, powers or privileges of this Series;

(2) Unless the vote or consent of the holders of a greater number of shares shall then be required by law, the consent of the holders of at least 66 2/3% of all of the shares of this Series and all other series of Preferred Stock ranking on a parity with shares of this Series, either as to dividends or upon liquidation, at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of this Series and such other series of Preferred Stock shall vote together as a single class without regard to series, shall be necessary for authorizing, effecting, increasing or validating the creation, authorization or issue of any shares of any class of stock of the Corporation ranking prior to the shares of this Series as to dividends or upon liquidation, or the reclassification of any authorized stock of the Corporation into any such prior shares, or the creation, authorization or issue of any obligation or security convertible, into or evidencing the right to purchase any such prior shares.

(3) If, at the time of any annual meeting of stockholders for the election of directors, a default in preference dividends on any series of the Preferred Stock or any other class or series of preferred stock of the Corporation (other than any other class or series of the Corporation's preferred stock expressly entitled to elect additional directors to the Board by a vote separate and distinct from the vote provided for in this paragraph (3) ("Voting Preferred")) shall exist, the number of directors constituting the Board shall be increased by two (without duplication of any increase made pursuant to the terms of any other class or series of the Corporation's preferred stock other than any Voting Preferred) and the holders of the Corporation's preferred stock of all classes and series (other than any such Voting Preferred) shall have the right at such meeting, voting together as a single class without regard to class or series, to the exclusion of the holders of Common Stock and the Voting Preferred, to elect two directors of the Corporation to fill such newly created directorships. Such right shall continue until there are no dividends in arrears upon shares of any class or series of the Corporation's preferred stock ranking prior to or on a parity with shares of this Series as to dividends (other than any Voting Preferred). Each director elected by the holders of shares of any series of the Preferred Stock or any other class or series of the Corporation's preferred stock in an election provided for by this paragraph (3) (herein called a "Preferred Director") shall continue to serve as such director for the full term for which he shall have been elected, notwithstanding that prior to the end of such term a default in preference dividends shall cease to exist. Any Preferred Director may be removed by, and shall not be removed except by, the vote of the holders of record of the outstanding shares of the Corporation's preferred stock entitled to have originally voted for such director's election, voting together as a single class without regard to class or series, at a meeting of the stockholders, or of the holders of



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shares of the Corporation's preferred stock, called for that purpose. So long as a default in any preference dividends on any series of the Preferred Stock or any other class or series of preferred stock of the Corporation shall exist (other than any Voting Preferred) (A) any vacancy in the office of a Preferred Director may be filled (except as provided in the following clause (B)) by an instrument in writing signed by the remaining Preferred Director and filed with the Corporation and (B) in the case of the removal of any Preferred Director, the vacancy may be filled by the vote of the holders of the outstanding shares of the Corporation's preferred stock entitled to have originally voted for the removed director's election, voting together as a single class without regard to class or series, at the same meeting at which such removal shall be voted. Each director appointed as aforesaid shall be deemed for all purposes hereto to be a Preferred Director.

Whenever the term of office of the Preferred Directors shall end and a default in preference dividends shall no longer exist, the number of directors constituting the Board shall be reduced by two. For purposes hereof, a "default in preference dividends" on any series of the Preferred Stock or any other class or series of preferred stock of the Corporation shall be deemed to have occurred whenever the amount of accrued dividends upon such class or series of the Corporation's preferred stock shall be equivalent to six full quarterly dividends or more, and, having so occurred, such default shall be deemed to exist thereafter until, but only until, all accrued dividends on all such shares of the Corporation's preferred stock of each and every series then outstanding (other than any Voting Preferred or shares of any class or series ranking junior to shares of this Series as to dividends) shall have been paid to the end of the last preceding quarterly dividend period.

(4) Without limiting the foregoing, under any circumstances in which the Series would have additional rights under Rhode Island law if the Corporation were incorporated under the Rhode Island Business Corporation Act (rather than the Delaware General Corporation Law), holders of shares of the Series shall be entitled to such rights, including, without limitation, voting rights under Chapter 7-1.1-55, voting and notice rights under Chapter 7-1.1-67 and dissenters' rights under Chapters 7-1.1-73 and 7-1.1-74 of the Rhode Island Business Corporation Act (as such Chapters may be amended from time to time).

(g) Reacquired Shares. Shares of this Series which have been issued and reacquired through redemption or purchase shall, upon compliance with an applicable provision of the Delaware General Corporation Law, have the status of authorized and unissued shares of Preferred Stock and may be reissued but only as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board.

(h) Relation to Existing Preferred Classes of Stock. Shares of this Series are equal in rank and preference with all other series of the Preferred Stock (other than the ESOP Convertible Preferred Stock, Series C) outstanding on the date of original issue of the shares of this Series and are senior in rank and preference to the Common Stock and the ESOP Convertible Preferred Stock, Series C of the Corporation.

(i) Relation to Other Preferred Classes of Stock. For purposes of this resolution, any stock of any class or classes of the Corporation shall be deemed to rank:

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(1) prior to the shares of this Series, either as to dividends or upon liquidation, if the holders of such class or classes shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, as the case may be, in preference or priority to the holders of shares of this Series;

(2) on a parity with shares of this Series, either as to dividends or upon liquidation, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share or sinking fund provisions, if any, be different from those of this Series, if the holders of such stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, as the case may be, in proportion to their respective dividend rates or liquidation prices, without preference or priority, one over the other, as between the holders of such stock and the holders of shares of this Series; and

(3) junior to the shares of this Series, either as to dividends or upon liquidation, if such class shall be Common Stock or if the holders of shares of this Series shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, as the case may be, in preference or priority to the holders of shares of such class or classes.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be duly executed by James H. Hance, Jr., its Vice Chairman and Chief Financial Officer, and attested to by Rachel R. Cummings, its Corporate Secretary, and has caused the corporate seal to be affixed hereto, this 26th day of March, 2004.

BANK OF AMERICA CORPORATION

By: /s/ James H. Hance, Jr.  
Vice Chairman and Chief Financial Officer

ATTEST:

/s/ Rachel R. Cummings  
Corporate Secretary

(Corporate Seal)

CERTIFICATE OF MERGER  
OF  
FLEETBOSTON FINANCIAL CORPORATION  
INTO  
BANK OF AMERICA CORPORATION

In accordance with Section 252 of the General Corporation Law of the State of Delaware, Bank of America Corporation, a Delaware corporation ("Bank of America"), does hereby certify as follows:

FIRST: That the name and state of incorporation of each of the constituent corporations of the merger herein certified are as follows:

<u>Name</u>	<u>State of Incorporation</u>
FleetBoston Financial Corporation	Rhode Island
Bank of America Corporation	Delaware

SECOND: That an Agreement and Plan of Merger, dated as of October 27, 2003, by and between FleetBoston Financial Corporation ("FleetBoston"), a Rhode Island Corporation, and Bank of America, was approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 252 of the General Corporation Law of the State of Delaware.

THIRD: That Bank of America will continue as the surviving corporation.

FOURTH: That the Amended and Restated Certificate of Incorporation of Bank of America at the effective time of the merger shall be the certificate of incorporation of the surviving corporation.

FIFTH: That a copy of the executed Agreement and Plan of Merger is on file at the offices of the surviving corporation at Bank of America Corporate Center, Charlotte, North Carolina 28255.

SIXTH: That a copy of the Agreement and Plan of Merger will be furnished by Bank of America, on request and without cost, to any stockholder of any constituent corporation.

SEVENTH: The authorized capital stock of FleetBoston consisted of 2,000,000,000 shares of Common Stock, \$0.01 par value per share, and 16,000,000 shares of Preferred Stock, \$1.00 par value per share, of which 690,000 shares were designated as Series VI 6.75% Perpetual Preferred Stock and 805,000 shares were designated as Series VII Fixed/Adjustable Rate Cumulative Preferred Stock.

EIGHTH: This Certificate of Merger shall become effective on April 1, 2004 at 12:01 a.m., Eastern Time.

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IN WITNESS WHEREOF, Bank of America has caused this Certificate of Merger to be executed by a duly authorized officer on this 31 day of March, 2004.

BANK OF AMERICA CORPORATION

By: /s/ JAMES H. HANCE, JR.

Name: James H. Hance, Jr.

Title: Chief Financial Officer

CERTIFICATE OF MERGER

OF

MBNA CORPORATION  
(a Maryland corporation)

with and into

BANK OF AMERICA CORPORATION  
(a Delaware corporation)

Pursuant to Section 252 of the General Corporation Law of the State of Delaware (the "DGCL"), Bank of America Corporation, a Delaware corporation ("Bank of America"), hereby certifies the following information relating to the merger of MBNA Corporation, a Maryland corporation ("MBNA"), with and into Bank of America (the "Merger"):

**FIRST:** The name and state of incorporation of each of the constituent corporations (the "Constituent Corporations") in the Merger are:

<u>Name:</u>	<u>State of Incorporation</u>
Bank of America Corporation	Delaware
MBNA Corporation	Maryland

**SECOND:** The Agreement and Plan of Merger, dated as of June 30, 2005, by and between MBNA and Bank of America (the "Plan of Merger"), setting forth the terms and conditions of the Merger has been approved, adopted, certified, executed and acknowledged by each of the Constituent Corporations in accordance with the requirements of Section 252 of the DGCL.

**THIRD:** The name of the surviving corporation of the Merger (the "Surviving Corporation") is Bank of America Corporation.

**FOURTH:** The Amended and Restated Certificate of Incorporation of Bank of America in effect immediately prior to the effective time of the Merger shall be the certificate of incorporation of the Surviving Corporation.

**FIFTH:** The executed Plan of Merger is on file at the principal place of business of the Surviving Corporation at Bank of America Corporate Center, 100 N. Tryon Street, Charlotte, North Carolina 28255.

**SIXTH:** A copy of the Plan of Merger will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of either Constituent Corporation.

**SEVENTH:** The authorized capital stock of MBNA consisted of 1,500,000,000 shares of

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common stock, par value \$0.01 per share, and 20,000,000 shares of preferred stock, par value \$0.01 per share.

**EIGHTH:** The Merger shall become effective as of 12:01 a.m., Eastern time, on January 1, 2006.

IN WITNESS WHEREOF, Bank of America has caused this Certificate of Merger to be executed by its duly authorized officer on this 29 day of December, 2005.

BANK OF AMERICA CORPORATION

By: /s/ WILLIAM J. MOSTYN

Name: William J. Mostyn

Title: Secretary

**CERTIFICATE OF ELIMINATION  
OF  
FIXED/ADJUSTABLE RATE CUMULATIVE PREFERRED STOCK  
AND  
6.75% PERPETUAL PREFERRED STOCK  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151(g)  
of the General Corporation Law  
of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Company"), in accordance with the provisions of Section 151(g) of the General Corporation Law of the State of Delaware (the "DGCL"), hereby certifies as follows:

1. That, pursuant to Section 151 of the DGCL and the authority granted in the Amended and Restated Certificate of Incorporation of the Company (the "Certificate of Incorporation"), the Board of Directors of the Company (the "Board"), by resolution duly adopted, authorized the issuance of a series of 805,000 shares of Fixed/Adjustable Rate Cumulative Preferred Stock, without par value (the "Fixed/Adjustable Preferred Stock"), and established the powers, designations, preferences and relative, participating and other rights, and the qualifications, limitations or restrictions thereof, and, on March 29, 2004, filed a Certificate of Designation with respect to such Fixed/Adjustable Preferred Stock in the office of the Secretary of State of the State of Delaware (the "Secretary of State").
2. That, pursuant to Section 151 of the DGCL and the authority granted in the Certificate of Incorporation, the Board, by resolution duly adopted, authorized the issuance of a series of 690,000 shares of 6.75% Perpetual Preferred Stock, without par value (the "Perpetual Preferred Stock"), and established the powers, designations, preferences and relative, participating and other rights, and the qualifications, limitations or restrictions thereof, and, on March 29, 2004, filed a Certificate of Designation with respect to such Perpetual Preferred Stock in the office of the Secretary of State.
3. That on May 26, 2006 the Special Preferred Stock Committee of the Board (the "Committee") authorized and approved the redemption of the issued and outstanding shares of Fixed/Adjustable Preferred Stock on July 3, 2006 and the redemption of the Fixed/Adjustable Preferred Stock on July 14, 2006.
4. That all of the issued and outstanding shares of Fixed/Adjustable Preferred Stock were redeemed on July 3, 2006 and all of the issued and outstanding shares of Perpetual Preferred Stock were redeemed on July 14, 2006, and, therefore, no shares of

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Fixed/Adjustable Preferred Stock or Perpetual Preferred Stock are outstanding and no shares thereof will be issued subject to such Certificates of Designation.

5. That the Board has adopted the following resolutions:

WHEREAS, by resolution of the Board of Directors of the Company (the "Board") and by a Certificate of Designation filed in the office of the Secretary of State of the State of Delaware (the "Secretary of State") on March 29, 2004, this Company authorized the issuance of a series of 805,000 shares of Fixed/Adjustable Rate Cumulative Preferred Stock, without par value, of the Company (the "Fixed/Adjustable Preferred Stock") and established the voting powers, designations, preferences and relative, participating and other rights, and the qualifications, limitations or restrictions thereof; and

WHEREAS, by resolution of the Board and by a Certificate of Designation filed in the office of the Secretary of State on March 29, 2004, this Company authorized the issuance of a series of 690,000 shares of 6.75% Perpetual Preferred Stock, without par value, of the Company (the "Perpetual Preferred Stock") and established the voting powers, designations, preferences and relative, participating and other rights, and the qualifications, limitations and restrictions thereof;

WHEREAS, on May 26, 2006, the Special Preferred Stock Committee of the Board (the "Committee") authorized and approved the redemption of all the issued and outstanding shares of the Fixed/Adjustable Preferred Stock on July 3, 2006 and the Perpetual Preferred Stock on July 14, 2006;

WHEREAS, all of the issued and outstanding shares of Fixed/Adjustable Preferred Stock were redeemed on July 3, 2006 and all issued and outstanding shares of Perpetual Preferred Stock were redeemed on July 14, 2006, and, therefore, no shares of Fixed/Adjustable Preferred Stock or Perpetual Preferred Stock are outstanding and no shares thereof will be issued subject to such Certificates of Designation;

WHEREAS, it is desirable that all matters set forth in the Certificates of Designation with respect to such Fixed/Adjustable Preferred Stock and Perpetual Preferred Stock be eliminated from the Amended and Restated Certificate of Incorporation, as heretofore amended, of the Company (the "Certificate of Incorporation").

NOW, THEREFORE, BE IT AND IT HEREBY IS:

RESOLVED, that all matters set forth in the Certificates of Designation with respect to such Fixed/Adjustable Preferred Stock and Perpetual Preferred Stock be eliminated from the Certificate of Incorporation; and it is further

RESOLVED, that the officers of the Company be, and hereby are,



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authorized and directed to file a Certificate with the office of the Secretary of State setting forth a copy of these resolutions whereupon all matters set forth in the Certificates of Designation with respect to such Fixed/Adjustable Preferred Stock and Perpetual Preferred Stock shall be eliminated from the Certificate of Incorporation; and it is further

RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized and directed, for and on behalf of the Corporation, to take any and all actions, to perform all such acts and things, to execute, file, deliver or record in the name and on behalf of the Corporation, all such certificates, instruments, agreements or other documents, and to make all such payments as they, in their judgment, or in the judgment of any one or more of them, may deem necessary, advisable or appropriate in order to carry out the purpose and intent of the foregoing resolutions and the transactions contemplated therein or thereby, the authorization therefor to be conclusively evidenced by the taking of such action or the execution and delivery of such certificates, instruments, agreements or documents.

6. That, accordingly, all matters set forth in the Certificates of Designation with respect to such Fixed/Adjustable Preferred Stock and Perpetual Preferred Stock be, and hereby are, eliminated from the Certificate of Incorporation, as heretofore amended.

IN WITNESS WHEREOF, the Company has caused this Certificate to be signed by its duly authorized officer as of this 31st day of July, 2006.

**BANK OF AMERICA CORPORATION**

By: /s/ Teresa M. Brenner

Name: Teresa M. Brenner

Title: Associate General Counsel

**CERTIFICATE OF DESIGNATIONS  
OF  
6.204% NON-CUMULATIVE PREFERRED STOCK, SERIES D  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At a meeting duly convened and held on July 26, 2006, the Board of Directors of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on September 6, 2006, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's 6.204% Non-Cumulative Preferred Stock, Series D, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in Exhibit A hereto, which is incorporated herein by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 13th day of September, 2006.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

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**EXHIBIT A**  
**TO**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**6.204% NON-CUMULATIVE PREFERRED STOCK, SERIES D**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “6.204% Non-Cumulative Preferred Stock, Series D” (the “*Series D Preferred Stock*”). Each share of Series D Preferred Stock shall be identical in all respects to every other share of Series D Preferred Stock. Series D Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series D Preferred Stock shall be 34,500. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series D Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series D Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series D Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series D Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B and (b) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series D Preferred Stock in the payment of dividends and in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series D Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series D Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series D Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$25,000 per share of Series D Preferred Stock, and no more, payable quarterly in arrears on each March 14, June 14, September 14 and December 14; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from and including the date of issuance of the Series D Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series D Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate per annum equal to 6.204%. The record date for payment of dividends on the Series D Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series D Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series D Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series D Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such

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dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series D Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series D Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *pro rata* portion, of the Series D Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series D Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted.

Subject to the succeeding sentence, for so long as any shares of Series D Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series D Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series D Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a pro rate basis among the holders of the shares of Series D Preferred Stock and the holders of any Parity Stock. For purposes of calculating the pro rate allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series D Preferred Stock and the aggregate of the current and accrued dividends due on the Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series D Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series D Preferred Stock shall not be entitled to participate in any such dividend.

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### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series D Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series D Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series D Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series D Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series D Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series D Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series D Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series D Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after the Dividend Payment Date on September 14, 2011, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series D Preferred Stock shall be \$25,000 per share plus dividends that have been declared but not paid.

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**(b) Notice of Redemption.** Notice of every redemption of shares of Series D Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series D Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series D Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series D Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series D Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series D Preferred Stock at the time outstanding, the shares of Series D Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series D Preferred Stock in proportion to the number of Series D Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series D Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to

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the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.**

**(a) General.** The holders of Series D Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by Delaware law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series D Preferred Stock or any other class or series of preferred stock that ranks on parity with Series D Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b) have been conferred and are exercisable, have not been paid in an aggregate amount equal, as to any class or series, to at least six quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors of the Corporation shall be increased by two, and the holders of the Series D Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors of the Corporation shall at no time include more than two such directors. Each such director elected by the holders of shares of Series D Preferred Stock and any other class or series of preferred stock that ranks on parity with the Series D Preferred Stock as to payment of dividends is a "*Preferred Director*".

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series D Preferred Stock and any other class or series of our stock that ranks on parity with Series D Preferred Stock as to payment of dividends and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series D Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series D Preferred Stock and any other class or series of preferred stock that ranks on parity with Series D Preferred Stock as to payment of dividends and for which dividends have not been paid for the election of the two directors to be



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elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series D Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series D Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series D Preferred Stock and any other class or series of preferred stock that ranks on parity with Series D Preferred Stock as to payment of dividends, if any, for at least four quarterly Dividend Periods, then the right of the holders of Series D Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the board of directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series D Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**Section 8. Preemption and Conversion.** The holders of Series D Preferred Stock shall not have any rights of preemption or rights to convert such Series D Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series D Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series D Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

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**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series D Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series D Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series D Preferred Stock are not subject to the operation of a sinking fund.

**CERTIFICATE OF DESIGNATIONS  
OF  
FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES E  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At a meeting duly convened and held on July 26, 2006, the Board of Directors of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on October 30, 2006, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series E, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in Exhibit A hereto, which is incorporated herein by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 3rd day of November, 2006.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

**EXHIBIT A**  
**TO**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES E**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “Floating Rate Non-Cumulative Preferred Stock, Series E” (the “*Series E Preferred Stock*”). Each share of Series E Preferred Stock shall be identical in all respects to every other share of Series E Preferred Stock. Series E Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series E Preferred Stock shall be 85,100. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series E Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series E Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series E Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Calculation Agent*” shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series E Preferred Stock.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series E Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D and (c) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series E Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series E Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series E Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Telerate Page 3750*” means the display page so designated on the Moneyline/Telerate Service (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“*Three-Month LIBOR*” means, with respect to any Dividend Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 A.M., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period, the most

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recent rate that could have been determined in accordance with the first sentence of this paragraph had Series E Preferred Stock been outstanding. The calculation agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series E Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series E Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$25,000 per share of Series E Preferred Stock, and no more, payable quarterly in arrears on each February 15, May 15, August 15 and November 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a "*Dividend Payment Date*"). The period from and including the date of issuance of the Series E Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a "*Dividend Period*." Dividends on each share of Series E Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate per annum equal to the greater of (i) Three-Month LIBOR plus a spread of 0.35% and (ii) 4.00%. The record date for payment of dividends on the Series E Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series E Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series E Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Series E Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series E Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series E Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of

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any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series E Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series E Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series E Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series E Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series E Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a pro rate basis among the holders of the shares of Series E Preferred Stock and the holders of any Parity Stock. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series E Preferred Stock and the aggregate of the current and accrued dividends due on the Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series E Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series E Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series E Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series E Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series E Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series E Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series E Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with

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the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series E Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series E Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series E Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after the Dividend Payment Date on November 15, 2011, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series E Preferred Stock shall be \$25,000 per share plus dividends that have been declared but not paid.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series E Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series E Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series E Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series E Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series E Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series E Preferred Stock at the time outstanding, the shares of Series E Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series E Preferred Stock in proportion to the number of Series E Preferred Stock held by such holders or by lot or in such other manner as



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the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series E Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

**(a) General.** The holders of Series E Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by Delaware law.

#### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series E Preferred Stock or any other class or series of preferred stock that ranks on parity with Series E Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b) have been conferred and are exercisable, have not been paid in an aggregate amount equal, as to any class or series, to at least six quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors of the Corporation shall be increased by two, and the holders of the Series E Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of

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such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors of the Corporation shall at no time include more than two such directors. Each such director elected by the holders of shares of Series E Preferred Stock and any other class or series of preferred stock that ranks on parity with the Series E Preferred Stock as to payment of dividends is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series E Preferred Stock and any other class or series of our stock that ranks on parity with Series E Preferred Stock as to payment of dividends and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series E Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series E Preferred Stock and any other class or series of preferred stock that ranks on parity with Series E Preferred Stock as to payment of dividends and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series E Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series E Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series E Preferred Stock and any other class or series of preferred stock that ranks on parity with Series E Preferred Stock as to payment of dividends, if any, for at least four quarterly Dividend Periods, then the right of the holders of Series E Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate and the number of directors constituting the board of directors will be reduced accordingly. Any Preferred Director may be removed at any

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time without cause by the holders of record of a majority of the outstanding shares of the Series E Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**Section 8. Preemption and Conversion.** The holders of Series E Preferred Stock shall not have any rights of preemption or rights to convert such Series E Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series E Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series E Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series E Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series E Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series E Preferred Stock are not subject to the operation of a sinking fund.

**CERTIFICATE OF DESIGNATIONS  
OF  
FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES F  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*Corporation*"), does hereby certify that:

1. At a meeting duly convened and held on April 26, 2006, the Board of Directors of the Corporation (the "*Board*") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Committee (the "*Committee*") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on February 12, 2007, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series F, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in Exhibit A hereto, which is incorporated herein by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 15th day of February, 2007.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

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**EXHIBIT A**  
**TO**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES F**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “Floating Rate Non-Cumulative Preferred Stock, Series F” (the “*Series F Preferred Stock*”). Each share of Series F Preferred Stock shall be identical in all respects to every other share of Series F Preferred Stock. Series F Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series F Preferred Stock shall be 7,001. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series F Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series F Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series F Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Calculation Agent*” shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series F Preferred Stock.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

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“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series F Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G and (e) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series F Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series F Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series F Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Telerate Page 3750*” means the display page so designated on the Moneyline/Telerate Service (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“*Three-Month LIBOR*” means, with respect to any Dividend Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such

quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had Series F Preferred Stock been outstanding. The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series F Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series F Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$100,000 per share of Series F Preferred Stock, and no more, payable quarterly in arrears on each March 15, June 15, September 15 and December 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a "*Dividend Payment Date*"). The period from and including the date of issuance of the Series F Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a "*Dividend Period*." Dividends on each share of Series F Preferred Stock will accrue on the liquidation preference of \$100,000 per share for each Dividend Period (1) from the date of issuance to, but excluding, the Dividend Payment Date in March 2012 (if issued prior to that date) at a rate per annum equal to Three-Month LIBOR plus a spread of 0.40% and (2) thereafter at a rate per annum equal to the greater of (i) Three-Month LIBOR plus a spread of 0.40% and (ii) 4.00%. The record date for payment of dividends on the Series F Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series F Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series F Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Series F Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such

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dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series F Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series F Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series F Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series F Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series F Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series F Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series F Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series F Preferred Stock and the holders of any Parity Stock. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series F Preferred Stock and the aggregate of the current and accrued dividends due on the Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series F Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series F Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series F Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and



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subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series F Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$100,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series F Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series F Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series F Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series F Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series F Preferred Stock and all holders of any Parity Stock, then the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series F Preferred Stock at the time outstanding, at any time on or after the later of March 15, 2012 and the date of original issuance of the Series F Preferred Stock, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series F Preferred Stock shall be \$100,000 per share plus dividends that have been declared but not paid plus accrued and unpaid dividends for the then-current Dividend Period to the redemption date.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series F Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 15 days and not more than 60 days

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before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series F Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series F Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series F Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series F Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series F Preferred Stock at the time outstanding, the shares of Series F Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series F Preferred Stock in proportion to the number of Series F Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series F Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

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**Section 7. Voting Rights.** The holders of the Series F Preferred Stock will have no voting rights and will not be entitled to elect any directors, except as expressly provided by law.

**Section 8. Preemption and Conversion.** The holders of Series F Preferred Stock shall not have any rights of preemption or rights to convert such Series F Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series F Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series F Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series F Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series F Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series F Preferred Stock are not subject to the operation of a sinking fund.

**CERTIFICATE OF DESIGNATIONS  
OF  
ADJUSTABLE RATE NON-CUMULATIVE PREFERRED STOCK, SERIES G  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*Corporation*"), does hereby certify that:

1. At a meeting duly convened and held on April 26, 2006, the Board of Directors of the Corporation (the "*Board*") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Committee (the "*Committee*") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on February 12, 2007, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Adjustable Rate Non-Cumulative Preferred Stock, Series G, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in Exhibit A hereto, which is incorporated herein by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 15th day of February, 2007.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

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**EXHIBIT A**  
**TO**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**ADJUSTABLE RATE NON-CUMULATIVE PREFERRED STOCK, SERIES G**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “Adjustable Rate Non-Cumulative Preferred Stock, Series G” (the “*Series G Preferred Stock*”). Each share of Series G Preferred Stock shall be identical in all respects to every other share of Series G Preferred Stock. Series G Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series G Preferred Stock shall be 8,501. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series G Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series G Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series G Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Calculation Agent*” shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series G Preferred Stock.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

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“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series G Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F and (e) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series G Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series G Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series G Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Telerate Page 3750*” means the display page so designated on the Moneyline/Telerate Service (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“*Three-Month LIBOR*” means, with respect to any Dividend Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such

quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had Series G Preferred Stock been outstanding. The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series G Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series G Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$100,000 per share of Series G Preferred Stock, and no more, payable as follows: (i) if the Series G Preferred Stock is issued prior to March 15, 2012, semi-annually in arrears on each March 15 and September 15 through March 15, 2012; and (ii) from and including the later of March 15, 2012 and the date of issuance, quarterly in arrears on each March 15, June 15, September 15 and December 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a "*Dividend Payment Date*"). The period from and including the date of issuance of the Series G Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a "*Dividend Period*." Dividends on each share of Series G Preferred Stock will accrue on the liquidation preference of \$100,000 per share for each Dividend Period (1) from the date of issuance to, but excluding, the Dividend Payment Date in March 2012 (if issued prior to that date) at a rate per annum equal to 5.63% and (2) thereafter at a rate per annum equal to the greater of (x) Three-Month LIBOR plus a spread of 0.40% and (y) 4.00%. The record date for payment of dividends on the Series G Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series G Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series G Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of

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Series G Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series G Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series G Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *pro rata* portion, of the Series G Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series G Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series G Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series G Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series G Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series G Preferred Stock and the holders of any Parity Stock. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series G Preferred Stock and the aggregate of the current and accrued dividends due on the Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series G Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series G Preferred Stock shall not be entitled to participate in any such dividend.



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### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series G Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series G Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$100,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series G Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series G Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series G Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series G Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series G Preferred Stock and all holders of any Parity Stock, then the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series G Preferred Stock at the time outstanding, at any time on or after the later of March 15, 2012 and the date of original issuance of the Series G Preferred Stock, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series G Preferred Stock shall be \$100,000 per share plus

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dividends that have been declared but not paid plus accrued and unpaid dividends for the then-current Dividend Period to the redemption date.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series G Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 15 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series G Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series G Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series G Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series G Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series G Preferred Stock at the time outstanding, the shares of Series G Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series G Preferred Stock in proportion to the number of Series G Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series G Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any

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interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.** The holders of the Series G Preferred Stock will have no voting rights and will not be entitled to elect any directors, except as expressly provided by law.

**Section 8. Preemption and Conversion.** The holders of Series G Preferred Stock shall not have any rights of preemption or rights to convert such Series G Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series G Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series G Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series G Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series G Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series G Preferred Stock are not subject to the operation of a sinking fund.

**CERTIFICATE OF DESIGNATIONS  
OF  
6.625% NON-CUMULATIVE PREFERRED STOCK, SERIES I  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At a meeting duly convened and held on January 24, 2007, the Board of Directors of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Special Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on September 20, 2007, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's 6.625% Non-Cumulative Preferred Stock, Series I, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in the Certificate of Designations attached hereto as Exhibit A, which is incorporated herein and made a part of these resolutions by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 25th day of September, 2007.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

**EXHIBIT A**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**6.625% NON-CUMULATIVE PREFERRED STOCK, SERIES I**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “6.625% Non-Cumulative Preferred Stock, Series I” (the “*Series I Preferred Stock*”). Each share of Series I Preferred Stock shall be identical in all respects to every other share of Series I Preferred Stock. Series I Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series I Preferred Stock shall be 25,300. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series I Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series I Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series I Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series I Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

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“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding), (e) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding) and (f) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series I Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series I Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series I Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series I Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$25,000 per share of Series I Preferred Stock, and no more, payable quarterly in arrears on each January 1, April 1, July 1, and October 1; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from and including the date of issuance of the Series I Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series I Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate per annum equal to 6.625%. The record date for payment of dividends on the Series I Preferred Stock shall be the fifteenth day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series I Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series I Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series I Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such

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dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series I Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series I Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series I Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series I Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series I Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series I Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series I Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series I Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series I Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series I Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series I Preferred Stock shall not be entitled to participate in any such dividend.

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#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series I Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series I Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series I Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series I Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series I Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series I Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series I Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series I Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after the Dividend Payment Date on October 1, 2017, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series I Preferred Stock shall be \$25,000 per share plus dividends that have been declared but not paid.



**(b) Notice of Redemption.** Notice of every redemption of shares of Series I Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series I Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series I Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series I Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series I Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series I Preferred Stock at the time outstanding, the shares of Series I Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series I Preferred Stock in proportion to the number of Series I Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series I Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the

Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.**

**(a) General.** The holders of Series I Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by Delaware law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series I Preferred Stock or any other class or series of preferred stock that ranks on parity with Series I Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal, as to any class or series, to at least six quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors of the Corporation shall be increased by two, and the holders of the Series I Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors of the Corporation shall at no time include more than two such directors. Each such director elected by the holders of shares of Series I Preferred Stock and any other class or series of preferred stock that ranks on parity with the Series I Preferred Stock as to payment of dividends and having equivalent voting rights is a "*Preferred Director.*"

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series I Preferred Stock and any other class or series of our stock that ranks on parity with Series I Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series I Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series I Preferred Stock and any other class or series of preferred stock that ranks on parity with Series I Preferred Stock as to payment of dividends and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series I Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series I Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series I Preferred Stock and any other class or series of preferred stock that ranks on parity with Series I Preferred Stock as to payment of dividends, if any, for at least four quarterly Dividend Periods, then the right of the holders of Series I Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the board of directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series I Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**Section 8. Preemption and Conversion.** The holders of Series I Preferred Stock shall not have any rights of preemption or rights to convert such Series I Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series I Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series I Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series I Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized

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committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series I Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series I Preferred Stock are not subject to the operation of a sinking fund.

**CERTIFICATE OF DESIGNATIONS  
OF  
7.25% NON-CUMULATIVE PREFERRED STOCK, SERIES J  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At a meeting duly convened and held on January 24, 2007, the Board of Directors of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Special Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on November 14, 2007, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's 7.25% Non-Cumulative Preferred Stock, Series J, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in the Certificate of Designations attached hereto as Exhibit A, which is incorporated herein and made a part of these resolutions by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 19th day of November, 2007.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

**EXHIBIT A**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**7.25% NON-CUMULATIVE PREFERRED STOCK, SERIES J**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “7.25% Non-Cumulative Preferred Stock, Series J” (the “*Series J Preferred Stock*”). Each share of Series J Preferred Stock shall be identical in all respects to every other share of Series J Preferred Stock. Series J Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series J Preferred Stock shall be 41,400. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series J Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series J Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series J Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series J Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding), (e) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding), (f) the Corporation’s 6.625% Non-Cumulative Preferred Stock, Series I and (g) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series J Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series J Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series J Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series J Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$25,000 per share of Series J Preferred Stock, and no more, payable quarterly in arrears on each February 1, May 1, August 1 and November 1; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from and including the date of issuance of the Series J Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series J Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate per annum equal to 7.25%. The record date for payment of dividends on the Series J Preferred Stock shall be the fifteenth day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series J Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series J Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series J Preferred Stock shall have no right to receive, dividends accrued for such Dividend

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Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series J Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series J Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series J Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series J Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series J Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series J Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series J Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series J Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series J Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series J Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series J Preferred Stock shall not be entitled to participate in any such dividend.



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### Section 5. Liquidation Rights.

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series J Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series J Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series J Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series J Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series J Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series J Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series J Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

### Section 6. Redemption.

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series J Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after the Dividend Payment Date on November 1, 2012, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series J Preferred Stock shall be \$25,000 per share plus dividends that have been declared but not paid.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series J Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series J Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series J Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series J Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series J Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series J Preferred Stock at the time outstanding, the shares of Series J Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series J Preferred Stock in proportion to the number of Series J Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series J Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the

Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.**

**(a) General.** The holders of Series J Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by Delaware law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series J Preferred Stock or any other class or series of preferred stock that ranks on parity with Series J Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal, as to any class or series, to at least six quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors of the Corporation shall be increased by two, and the holders of the Series J Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors of the Corporation shall at no time include more than two such directors. Each such director elected by the holders of shares of Series J Preferred Stock and any other class or series of preferred stock that ranks on parity with the Series J Preferred Stock as to payment of dividends and having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series J Preferred Stock and any other class or series of our stock that ranks on parity with Series J Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series J Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series J Preferred Stock and any other class or series of preferred stock that ranks on parity with Series J Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series J Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series J Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series J Preferred Stock and any other class or series of preferred stock that ranks on parity with Series J Preferred Stock as to payment of dividends, if any, for at least four quarterly Dividend Periods, then the right of the holders of Series J Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series J Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**Section 8. Preemption and Conversion.** The holders of Series J Preferred Stock shall not have any rights of preemption or rights to convert such Series J Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series J Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series J Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

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**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series J Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series J Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series J Preferred Stock are not subject to the operation of a sinking fund.

**CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES K  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At meetings duly convened and held on December 11, 2007 and January 23, 2008, the Board of Directors of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Special Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on January 25, 2008, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in the Certificate of Designations attached hereto as Exhibit A, which is incorporated herein and made a part of these resolutions by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 28th day of January, 2008.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

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**EXHIBIT A**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**FIXED-TO-FLOATING RATE**  
**NON-CUMULATIVE PREFERRED STOCK, SERIES K**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K” (the “*Series K Preferred Stock*”). Each share of Series K Preferred Stock shall be identical in all respects to every other share of Series K Preferred Stock. Series K Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series K Preferred Stock shall be 240,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series K Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series K Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series K Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Calculation Agent*” shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series K Preferred Stock during the Floating Rate Period (as defined below).

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series K Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding), (e) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding), (f) the Corporation’s 6.625% Non-Cumulative Preferred Stock, Series I, (g) the Corporation’s 7.25% Non-Cumulative Preferred Stock, Series J, (h) the Corporation’s 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L (if and when issued and outstanding), and (i) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series K Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series K Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series K Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01”, Three-Month LIBOR



will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series K Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series K Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$25,000 per share of Series K Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on each January 30 and July 30 and (y) for the Floating Rate Period, quarterly in arrears on each January 30, April 30, July 30 and October 30; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a "*Dividend Payment Date*"). The period from and including the date of issuance of the Series K Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a "*Dividend Period*." Dividends on each share of Series K Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 8.00%, for each Dividend Period from the issue date to, but excluding, January 30, 2018 (the "*Fixed Rate Period*"), and (2) Three-Month LIBOR plus a spread of 3.63%, for each Dividend Period from January 30, 2018 to the date of redemption of the Series K Preferred Stock (the "*Floating Rate Period*"). The record date for payment of dividends on the Series K Preferred Stock shall be the fifteenth day of the calendar month in which the Dividend

Payment Date falls. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series K Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series K Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series K Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series K Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series K Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *pro rata* portion, of the Series K Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series K Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series K Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series K Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series K Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series K Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series K Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on

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shares of Series K Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series K Preferred Stock shall not be entitled to participate in any such dividend.

**Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series K Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series K Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series K Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series K Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series K Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series K Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series K Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

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## Section 6. Redemption.

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series K Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after the Dividend Payment Date on January 30, 2018, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series K Preferred Stock shall be \$25,000 per share plus dividends that have been declared but not paid.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series K Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series K Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series K Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series K Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series K Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series K Preferred Stock at the time outstanding, the shares of Series K Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series K Preferred Stock in proportion to the number of Series K Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series K Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares

shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depositary Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.**

**(a) General.** The holders of Series K Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by Delaware law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series K Preferred Stock or any other class or series of preferred stock that ranks on parity with Series K Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors of the Corporation shall be increased by two, and the holders of the Series K Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors of the Corporation shall at no time include more than two such directors. Each such director elected by the holders of shares of Series K Preferred Stock and any other class or series of preferred stock that ranks on parity with the Series K Preferred Stock as to payment of dividends and having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series K Preferred Stock and any other class or series of our stock that ranks on parity with Series K Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to

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Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series K Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series K Preferred Stock and any other class or series of preferred stock that ranks on parity with Series K Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series K Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series K Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series K Preferred Stock and any other class or series of preferred stock that ranks on parity with Series K Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series K Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series K Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**Section 8. Preemption and Conversion.** The holders of Series K Preferred Stock shall not have any rights of preemption or rights to convert such Series K Preferred Stock into shares of any other class of capital stock of the Corporation.

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**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series K Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series K Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series K Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series K Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series K Preferred Stock are not subject to the operation of a sinking fund.

**CERTIFICATE OF DESIGNATIONS  
OF  
7.25% NON-CUMULATIVE PERPETUAL  
CONVERTIBLE PREFERRED STOCK, SERIES L  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At meetings duly convened and held on December 11, 2007 and January 23, 2008, the Board of Directors of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Special Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on January 28, 2008, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in the Certificate of Designations attached hereto as Exhibit A, which is incorporated herein and made a part of these resolutions by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 28th day of January, 2008.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel



**EXHIBIT A**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**7.25% NON-CUMULATIVE PERPETUAL**  
**CONVERTIBLE PREFERRED STOCK, SERIES L**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L”, \$0.01 par value, with a liquidation preference of \$1,000 per share (the “*Series L Preferred Stock*”). Each share of Series L Preferred Stock shall be identical in all respects to every other share of Series L Preferred Stock. Series L Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series L Preferred Stock shall be 6,900,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series L Preferred Stock then outstanding) by further resolution duly adopted by the Board, the Committee or any other duly authorized committee of the Board and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series L Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series L Preferred Stock:

“*Applicable Conversion Price*” at any given time means, for each share of Series L Preferred Stock, the price equal to \$1,000 divided by the Applicable Conversion Rate in effect at such time.

“*Applicable Conversion Rate*” means the Conversion Rate in effect at any given time.

“*Base Price*” has the meaning set forth in Section 6(d)(i).

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or required by law or regulation to close in New York, New York or in Charlotte, North Carolina.

“*Closing Price*” of the Common Stock on any determination date means the closing sale price or, if no closing sale price is reported, the last reported sale price of the shares of the Common Stock on the New York Stock Exchange on such date. If the Common Stock is not

traded on the New York Stock Exchange on any determination date, the Closing Price of the Common Stock on such determination date means the closing sale price as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is so listed or quoted, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national or regional securities exchange on which the Common Stock is so listed or quoted, or if the Common Stock is not so listed or quoted on a U.S. national or regional securities exchange, the last quoted bid price for the Common Stock in the over-the-counter market as reported by Pink Sheets LLC or a similar organization, or, if that bid price is not available, the market price of the Common Stock on that date as determined by a nationally recognized independent investment banking firm retained by the Corporation for this purpose.

For purposes of this Certificate of Designations, all references herein to the “Closing Price” and “last reported sale price” of the Common Stock on the New York Stock Exchange shall be such closing sale price and last reported sale price as reflected on the website of the New York Stock Exchange (<http://www.nyse.com>) and as reported by Bloomberg Professional Service; *provided* that in the event that there is a discrepancy between the closing sale price or last reported sale price as reflected on the website of the New York Stock Exchange and as reported by Bloomberg Professional Service, the closing sale price and last reported sale price on the website of the New York Stock Exchange will govern.

“*Common Stock*” means the common stock, \$0.01 par value, of the Corporation.

“*Conversion Agent*” shall mean Computershare Trust Company, N.A. and Computershare Inc. collectively acting in their capacity as conversion agent for the Series L Preferred Stock, and their respective successors and assigns.

“*Conversion Date*” has the meaning set forth in Section 6(a)(v)(B).

“*Conversion Rate*” means for each share of Series L Preferred Stock, 20 shares of Common Stock, plus cash in lieu of fractional shares, subject to adjustment as set forth herein.

“*Current Market Price*” of the Common Stock on any day, means the average of the VWAP of the Common Stock over each of the ten consecutive Trading Days ending on the earlier of the day in question and the day before the Ex-Date or other specified date with respect to the issuance or distribution requiring such computation, appropriately adjusted to take into account the occurrence during such period of any event described in Section 7(a)(i) through (vi).

“*Depository*” means DTC or its nominee or any successor depository appointed by the Corporation.

“*Dividend Payment Date*” has the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” has the meaning set forth in Section 4(a) hereof.

“*Dividend Threshold Amount*” has the meaning set forth in Section 7(a)(v).

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

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“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Exchange Property*” has the meaning set forth in Section 8(a).

“*Ex-Date*,” when used with respect to any issuance or distribution, means the first date on which the Common Stock or other securities trade without the right to receive the issuance or distribution.

“*Fundamental Change*” has the meaning set forth in Section 6(d)(i).

“*Holder*” means the Person in whose name the shares of Series L Preferred Stock are registered, which may be treated by the Corporation, Transfer Agent, Registrar, paying agent and Conversion Agent as the absolute owner of the shares of Series L Preferred Stock for the purpose of making payment and settling conversions and for all other purposes.

“*Junior Stock*” means the Common Stock and any other class or series of capital stock of the Corporation over which Series L Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Make-Whole Acquisition*” means the occurrence, prior to any Conversion Date, of one of the following:

(a) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act files a Schedule TO or any schedule, form, or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of common equity of the Corporation representing more than 50% of the voting power of the Common Stock; or

(b) consummation of the Corporation’s consolidation or merger or similar transaction or any sale, lease, or other transfer in one transaction or a series of related transactions of all or substantially all of the Corporation’s and the Corporation’s subsidiaries’ consolidated assets, taken as a whole, to any Person other than one of the Corporation’s subsidiaries, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property, other than pursuant to a transaction in which the persons that “beneficially owned” (as defined in Rule 13d-3 under the Exchange Act) directly or indirectly, voting shares immediately prior to such transaction beneficially own, directly or indirectly, voting shares representing a majority of the total voting power of all outstanding classes of voting shares of the continuing or surviving person immediately after the transaction;

*provided, however* that a Make-Whole Acquisition will not be deemed to have occurred if at least 90% of the consideration received by holders of the Common Stock in the transaction or transactions consists of shares of common stock or American Depositary Receipts in respect of common stock that are traded on a U.S. national securities exchange or securities exchange in the European Economic Area or that will be so traded when issued or exchanged in connection with a Make-Whole Acquisition.

“*Make-Whole Acquisition Conversion*” has the meaning set forth in Section 6(c)(i).

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“*Make-Whole Acquisition Conversion Period*” has the meaning set forth in Section 6(c)(i).

“*Make-Whole Acquisition Effective Date*” has the meaning set forth in Section 6(c)(i).

“*Make-Whole Acquisition Stock Price*” means the price paid per share of Common Stock in the event of a Make-Whole Acquisition. If the holders of shares of Common Stock receive only cash in the Make-Whole Acquisition, the Make-Whole Acquisition Stock Price will be the cash amount paid per share of Common Stock. Otherwise, the Make-Whole Acquisition Stock Price shall be the average of the Closing Price per share of Common Stock on the ten Trading Days up to, but not including, the Make-Whole Acquisition Effective Date.

“*Make-Whole Shares*” has the meaning set forth in Section 6(c)(i).

“*Nonpayment*” has the meaning set forth in Section 11(b)(i).

“*Notice of Optional Conversion*” has the meaning set forth in Section 6(b)(iii).

“*Optional Conversion Date*” has the meaning set forth in Section 6(b)(iii).

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding), (e) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding), (f) the Corporation’s 6.625% Non-Cumulative Preferred Stock, Series I, (g) the Corporation’s 7.25% Non-Cumulative Preferred Stock, Series J, (h) the Corporation’s Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K (if and when issued and outstanding) and (i) any other class or series of capital stock of the Corporation hereafter authorized that ranks on par with the Series L Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Person*” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company or trust.

“*Preferred Director*” has the meaning set forth in Section 11(b)(i).

“*Purchased Shares*” has the meaning set forth in Section 7(a)(vi)

“*Reference Price*” means the price paid per share of Common Stock in the event of a Fundamental Change. If the holders of shares of Common Stock receive only cash in the Fundamental Change, the Reference Price shall be the cash amount paid per share. Otherwise, the Reference Price will be the average of the Closing Price per share of Common Stock on the ten Trading Days up to, but not including, the effective date of the Fundamental Change.

“*Reorganization Event*” has the meaning set forth in Section 8.

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“*Registrar*” means Computershare Trust Company, N.A. or its nominee or any successor or registrar appointed by the Corporation.

“*Senior Stock*” means any class or series of capital stock of the Corporation authorized which has preference or priority over the Series L Preferred Stock as to the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Series L Preferred Stock*” has the meaning set forth in Section 1.

“*spin-off*” has the meaning set forth in Section 7(a)(iv).

“*Trading Day*” for purposes of determining the VWAP or Closing Price means a day on which the shares of Common Stock:

(a) are not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the close of business; and

(b) have traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the Common Stock.

“*Transfer Agent*” means Computershare Trust Company, N.A. acting as Transfer Agent, Registrar, and Conversion Agent for the Series L Preferred Stock, and its successors and assigns.

“*Voting Parity Securities*” has the meaning set forth in Section 11(b)(i).

“*VWAP*” means, per share of the Common Stock on any Trading Day, the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “BAC UN <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the open of trading on the relevant Trading Day until the close of trading on the relevant Trading Day (or if such volume-weighted average price is unavailable, the market price of one share of the Common Stock on such trading days determined, using a volume-weighted average method, by a nationally recognized investment banking firm (unaffiliated with the Corporation) retained for this purpose by the Corporation).

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series L Preferred Stock shall be entitled to receive, when, as and if declared by the Board or any duly authorized committee of the Board, but only out of assets legally available under Delaware law for payment, non-cumulative cash dividends on the liquidation preference of \$1,000 per share of Series L Preferred Stock, and no more, payable quarterly in arrears on each January 30, April 30, July 30 and October 30 of each year, beginning on April 30, 2008; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from and including the date of issuance of the

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Series L Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “*Dividend Period*”. Dividends on each share of Series L Preferred Stock will accrue on the liquidation preference of \$1,000 per share at a rate per annum equal to 7.25%. The record date for payment of dividends on the Series L Preferred Stock shall be the first day of the calendar month in which the relevant Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation will be rounded to the nearest cent, with one-half cent being rounded upward. Dividends on the Series L Preferred Stock will cease to accrue after conversion, as described below. If the Corporation issues additional shares of the Series L Preferred Stock, dividends on those additional shares will accrue from the preceding scheduled Dividend Payment Date at the dividend rate.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series L Preferred Stock shall be non-cumulative. Accordingly, if for any reason the Board or a duly authorized committee of the Board does not declare a dividend on the Series L Preferred Stock for a Dividend Period prior to the related Dividend Payment Date, that dividend will not accrue, and the Corporation will have no obligation to pay a dividend for that Dividend Period on the Dividend Payment Date or at any time in the future, whether or not the Board or a duly authorized committee of the Board declares a dividend on the Series L Preferred Stock or any other series of the Corporation’s preferred stock or Common Stock for any future Dividend Period.

**(c) Dividend Stopper.** So long as any share of Series L Preferred Stock remains outstanding, (i) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared and made or set aside for payment on any Junior Stock (other than a dividend payable solely in shares of Junior Stock), (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock will be repurchased, redeemed, or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series L Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, during a Dividend Period, unless, in each case, the full dividends for the then-current Dividend Period on all outstanding shares of Series L Preferred Stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation’s Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreements) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series L Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series L Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series L Preferred Stock and on any Parity Stock but does

not make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series L Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series L Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. The Corporation is not obligated to and will not pay Holders of the Series L Preferred Stock any interest or sum of money in lieu of interest on any dividend not paid on a Dividend Payment Date. The Corporation is not obligated to and will not pay Holders of the Series L Preferred Stock any dividend in excess of the dividends on the Series L Preferred Stock that are payable as described herein. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board or any duly authorized committee of the Board may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series L Preferred Stock shall not be entitled to participate in any such dividend.

**Section 5. Right to Convert.** Each Holder shall have the right, at such Holder's option, at any time, to convert all or any portion of such Holder's Series L Preferred Stock into shares of Common Stock at the Applicable Conversion Rate (subject to the conversion procedures set forth in Section 6 herein) plus cash in lieu of fractional shares.

**Section 6. Conversion.**

**(a) Conversion Procedures.**

(i) Effective immediately prior to the close of business on the Optional Conversion Date or any applicable Conversion Date, dividends shall no longer be declared on any converted shares of Series L Preferred Stock and such shares of Series L Preferred Stock shall cease to be outstanding, in each case, subject to the right of Holders to receive any declared and unpaid dividends on such shares and any other payments to which they are otherwise entitled pursuant to Section 5, Section 6(b), Section 6(c), Section 6(d), Section 8 or Section 12 hereof, as applicable.

(ii) Prior to the close of business on the Optional Conversion Date or any applicable Conversion Date, shares of Common Stock issuable upon conversion of, or other securities issuable upon conversion of, any shares of Series L Preferred Stock shall not be deemed outstanding for any purpose, and Holders shall have no rights with respect to the Common Stock or other securities issuable upon conversion (including voting rights, rights to respond to tender offers for the Common Stock and rights to receive any dividends or other distributions on the Common Stock or other securities issuable upon conversion) by virtue of holding shares of Series L Preferred Stock.

(iii) Shares of Series L Preferred Stock duly converted in accordance with the terms hereof, or otherwise reacquired by the Corporation, will resume the status of authorized and unissued preferred stock, undesignated as to series and available for future issuance. The Corporation may from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series L Preferred Stock.

(iv) The Person or Persons entitled to receive the Common Stock and/or securities issuable upon conversion of Series L Preferred Stock shall be treated for all purposes as the record holder(s) of such shares of Common Stock and/or securities as of the close of business on the Optional Conversion Date or any applicable Conversion Date. In the event that a Holder shall not by written notice designate the name in which shares of Common Stock and/or cash, securities or other property (including payments of cash in lieu of fractional shares) to be issued or paid upon conversion of shares of Series L Preferred Stock should be registered or paid or the manner in which such shares should be delivered, the Corporation shall be entitled to register and deliver such shares, and make such payment, in the name of the Holder and in the manner shown on the records of the Corporation or, in the case of global certificates, through book-entry transfer through the Depository.

(v) Conversion into shares of Common Stock will occur on the Optional Conversion Date or any applicable Conversion Date as follows:

(A) On the Optional Conversion Date, certificates representing shares of Common Stock shall be issued and delivered to Holders or their designee upon presentation and surrender of the certificate evidencing the Series L Preferred Stock to the Conversion Agent if shares of the Series L Preferred Stock are held in certificated form, and, if required, the furnishing of appropriate endorsements and transfer documents and the payment of all transfer and similar taxes. If a Holder's interest is a beneficial interest in a global certificate representing Series L Preferred Stock, a book-entry transfer through the Depository will be made by the Conversion Agent upon compliance with the Depository's procedures for converting a beneficial interest in a global security.

(B) On the date of any conversion at the option of Holders pursuant to Section 5, Section 6(b), Section 6(c) or Section 6(d), if a Holder's interest is in certificated form, a Holder must do each of the following in order to convert:

(1) complete and manually sign the conversion notice provided by the Conversion Agent, or a facsimile of the conversion notice, and deliver this irrevocable notice to the Conversion Agent;

(2) surrender the shares of Series L Preferred Stock to the Conversion Agent;

(3) if required, furnish appropriate endorsements and transfer documents;

(4) if required, pay all transfer or similar taxes; and

(5) if required, pay funds equal to any declared and unpaid dividend payable on the next Dividend Payment Date to which such Holder is entitled.

If a Holder's interest is a beneficial interest in a global certificate representing Series L Preferred Stock, in order to convert a Holder must comply with paragraphs (3) through (5) listed above and comply with the Depository's procedures for converting a beneficial interest in a global security.



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The date on which a Holder complies with the procedures in this clause (v) is the “*Conversion Date*.”

(C) The Conversion Agent shall, on a Holder’s behalf, convert the Series L Preferred Stock into shares of Common Stock, in accordance with the terms of the notice delivered by such Holder described in clause (B) above. If the Conversion Date is prior to the record date relating to any declared dividend for the Dividend Period in which a Holder elects to convert, the Holder will not receive any declared dividends for that Dividend Period. If the Conversion Date is after the record date relating to any declared dividend and prior to the Dividend Payment Date, the Holder will receive that dividend on the relevant Dividend Payment Date if the Holder was the holder of record on the record date for that dividend. However, if the Conversion Date is after the record date and prior to the Dividend Payment Date, whether or not the Holder was the holder of record on the record date, the Holder must pay to the Conversion Agent when it converts its shares of Series L Preferred Stock an amount in cash equal to the full dividend actually paid on the Dividend Payment Date for the then-current Dividend Period on the shares of Series L Preferred Stock being converted, unless the Holder’s shares of Series L Preferred Stock are being converted as a result of a conversion pursuant to Section 6(b), Section 6(c) or Section 6(d).

**(b) Conversion at the Corporation’s Option.**

(i) On or after January 30, 2013, the Corporation may, at its option, at any time or from time to time, cause some or all of the Series L Preferred Stock to be converted into shares of Common Stock at the then-Applicable Conversion Rate if, for 20 Trading Days during any period of 30 consecutive Trading Days the Closing Price of the Common Stock exceeds 130% of the then-Applicable Conversion Price of the Series L Preferred Stock. If the Corporation exercises its optional conversion right on January 30, 2013, it will still pay any dividend payable (in accordance with Section 4) on January 30, 2013 to the applicable Holders of record. The Corporation will provide notice of its optional conversion within five Trading Days of the end of the 30 consecutive Trading Day period.

(ii) If the Corporation elects to cause less than all of the Series L Preferred Stock to be converted under clause (i) above, the Conversion Agent will select the Series L Preferred Stock to be converted by lot, or on a *pro rata* basis or by another method the Conversion Agent considers fair and appropriate, including any method required by DTC or any successor depository (so long as such method is not prohibited by the rules of any stock exchange or quotation association on which the Series L Preferred Stock is then traded or quoted). If the Conversion Agent selects a portion of a Holder’s Series L Preferred Stock for partial conversion at the Corporation’s option and such Holder converts a portion of its shares of Series L Preferred Stock, the converted portion will be deemed to be from the portion selected for conversion at the Corporation’s option under this Section 6(b).

(iii) If the Corporation exercises the optional conversion right described in this Section 6(b), the Corporation shall provide notice of such conversion by first class mail to each Holder of record for the shares of Series L Preferred Stock to be converted (such notice a “*Notice of Optional Conversion*”) or issue a press release for publication and make this information available on its website. The Conversion Date shall be a date selected by the Corporation (the

“Optional Conversion Date”), and the Notice of Optional Conversion must be mailed, or the Corporation must issue the press release, not more than 20 days prior to the Optional Conversion Date. In addition to any information required by applicable law or regulation, the Notice of Optional Conversion or press release shall state, as appropriate:

(A) the Optional Conversion Date;

(B) the aggregate number of shares of Series L Preferred Stock to be converted and, if less than all of the shares of Series L Preferred Stock are to be converted, the percentage of shares of Series L Preferred Stock to be converted; and

(C) the number of shares of Common Stock to be issued upon conversion of each share of Series L Preferred Stock.

**(c) Conversion Upon Make-Whole Acquisition.**

(i) In the event of a Make-Whole Acquisition, each Holder shall have the option to convert its shares of Series L Preferred Stock (a “*Make-Whole Acquisition Conversion*”) during the period (the “*Make-Whole Acquisition Conversion Period*”) beginning on the effective date of the Make-Whole Acquisition (the “*Make-Whole Acquisition Effective Date*”) and ending on the date that is 30 days after the Make-Whole Acquisition Effective Date and receive an additional number of shares of Common Stock (the “*Make-Whole Shares*”) as set forth in clause (ii) below.

(ii) The number of Make-Whole Shares per share of Series L Preferred Stock shall be determined by reference to the table below for the applicable Make-Whole Acquisition Effective Date and the applicable Make-Whole Acquisition Stock Price:

Effective Date	\$40.00	\$41.00	\$42.00	\$44.00	\$47.00	\$50.00	\$60.00	\$80.00	\$110.00	\$150.00	\$200.00
1/24/2008	5.0000	4.7993	4.6190	4.2023	3.6851	3.2540	2.1450	1.0450	0.5164	0.2765	0.1468
1/30/2009	5.0000	4.7512	4.4643	4.1386	3.5702	3.1760	2.0317	0.9563	0.4682	0.2480	0.1285
1/30/2010	5.0000	4.6439	4.2929	3.9886	3.3830	2.9300	1.7617	0.6462	0.2287	0.1033	0.0390
1/30/2011	5.0000	4.6049	4.2429	3.9250	3.3170	2.8040	1.5650	0.5300	0.1964	0.1067	0.0500
1/30/2012	5.0000	4.5780	4.2405	3.8386	3.2596	2.5840	1.2667	0.2313	0.0755	0.0429	0.0206
1/30/2013	5.0000	4.5366	4.2214	3.7932	3.1660	2.5260	1.0217	0.0000	0.0000	0.0000	0.0000
Thereafter	5.0000	4.5366	4.2214	3.7932	3.1660	2.5260	1.0217	0.0000	0.0000	0.0000	0.0000

(A) The exact Make-Whole Acquisition Stock Prices and Make-Whole Acquisition Effective Dates may not be set forth in the table, in which case:

(1) if the Make-Whole Acquisition Stock Price is between two Make-Whole Acquisition Stock Price amounts in the table or the Make-Whole Acquisition Effective Date is between two dates in the table, the number of Make-Whole Shares will be determined by straight-line interpolation between the number of Make-Whole Shares set forth for the higher and lower Make-Whole Acquisition Stock Price amounts and the two Make-Whole Acquisition Effective Dates, as applicable, based on a 365-day year;

(2) if the Make-Whole Acquisition Stock Price is in excess of \$200.00 per share (subject to adjustment pursuant to Section 7 hereof), no Make-Whole Shares will be issued upon conversion of the Series L Preferred Stock; and

(3) if the Make-Whole Acquisition Stock Price is less than \$40.00 per share (subject to adjustment pursuant to Section 7 hereof), no Make-Whole Shares will be issued upon conversion of the Series L Preferred Stock.

(B) The Make-Whole Acquisition Stock Prices set forth in the table above are subject to adjustment pursuant to Section 7 hereof and shall be adjusted as of any date the Conversion Rate is adjusted. The adjusted Make-Whole Acquisition Stock Prices will equal the Make-Whole Acquisition Stock Prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Make-Whole Acquisition Stock Prices adjustment and the denominator of which is the Conversion Rate as so adjusted. Each of the number of Make-Whole Shares in the table shall also be subject to adjustment in the same manner as the Conversion Rate pursuant to Section 7.

(iii) On or before the twentieth day prior to the date the Corporation anticipates being the effective date for the Make-Whole Acquisition, a written notice shall be sent by or on behalf of the Corporation, by first-class mail, postage prepaid, to the Holders as they appear in the records of the Corporation. Such notice shall contain:

(A) the anticipated effective date of the Make-Whole Acquisition; and

(B) the date, which shall be 30 days after the anticipated Make-Whole Acquisition Effective Date, by which a Make-Whole Acquisition Conversion must be exercised.

(iv) On the Make-Whole Acquisition Effective Date, another written notice shall be sent by or on behalf of the Corporation, by first-class mail, postage prepaid, to the Holders as they appear in the records of the Corporation. Such notice shall contain:

(A) the date that shall be 30 days after the Make-Whole Acquisition Effective Date;

(B) the number of Make-Whole Shares;

(C) the amount of cash, securities and other consideration receivable by a Holder of Series L Preferred Stock upon conversion; and

(D) the instructions a Holder must follow to exercise its conversion option in connection with such Make-Whole Acquisition.

(v) To exercise a Make-Whole Acquisition Conversion option, a Holder must, no later than 5:00 p.m., New York City time on or before the date by which the Make-Whole Acquisition Conversion option must be exercised as specified in the notice delivered under clause (iv) above, comply with the procedures set forth in Section 6(a)(v)(B).

(vi) If a Holder does not elect to exercise the Make-Whole Acquisition Conversion option pursuant to this Section 6(c), the shares of Series L Preferred Stock or successor security held by it will remain outstanding, and the Holder will not be eligible to receive Make-Whole Shares.

(vii) Upon a Make-Whole Acquisition Conversion, the Conversion Agent shall, except as otherwise provided in the instructions provided by the Holder thereof in the written notice provided to the Corporation or its successor as set forth in Section 6(a)(iv) above, deliver to the Holder such cash, securities or other property as are issuable with respect to Make-Whole Shares in the Make-Whole Acquisition.

(viii) In the event that a Make-Whole Acquisition Conversion is effected with respect to shares of Series L Preferred Stock or a successor security representing less than all the shares of Series L Preferred Stock or a successor security held by a Holder, upon such Make-Whole Acquisition Conversion the Corporation or its successor shall execute and the Conversion Agent shall, unless otherwise instructed in writing, countersign and deliver to the Holder thereof, at the expense of the Corporation or its successors, a certificate evidencing the shares of Series L Preferred Stock or such successor security held by the Holder as to which a Make-Whole Acquisition Conversion was not effected.

**(d) Conversion Upon Fundamental Change.**

(i) In lieu of receiving the Make-Whole Shares, if the Reference Price in connection with a Make-Whole Acquisition is less than the Applicable Conversion Price (a "*Fundamental Change*"), a Holder may elect to convert each share of Series L Preferred Stock during the period beginning on the effective date of the Fundamental Change and ending on the date that is 30 days after the effective date of such Fundamental Change at an adjusted conversion price equal to the greater of (1) the Reference Price and (2) \$19.95, subject to adjustment as described in clause (ii) below (the "*Base Price*"). If the Reference Price is less than the Base Price, Holders will receive a maximum of 50.1253 shares of Common Stock per share of Series L Preferred Stock converted, subject to adjustment as described in clause (ii) below.

(ii) The Base Price shall be adjusted as of any date the Conversion Rate of the Series L Preferred Stock is adjusted pursuant to Section 7. The adjusted Base Price shall equal the Base Price applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Conversion Rate adjustment and the denominator of which is the Conversion Rate as so adjusted.

(iii) In lieu of issuing Common Stock upon conversion in the event of a Fundamental Change, the Corporation may at its option, and if it obtains Federal Reserve Board approval, pay an amount in cash (computed to the nearest cent) equal to the Reference Price for each share of Common Stock otherwise issuable upon conversion.

(iv) On or before the twentieth day prior to the date the Corporation anticipates being the effective date for the Fundamental Change, a written notice shall be sent by or on behalf of the Corporation, by first-class mail, postage prepaid, to the Holders as they appear in the records of the Corporation. Such notice shall contain:

(A) the anticipated effective date of the Fundamental Change; and

(B) the date, which shall be 30 days after the anticipated effective date of a Fundamental Change, by which a Fundamental Change conversion must be exercised.

(v) On the effective date of a Fundamental Change, another written notice shall be sent by or on behalf of the Corporation, by first-class mail, postage prepaid, to the Holders as they appear in the records of the Corporation. Such notice shall contain:

- (A) the date that shall be 30 days after the effective date of the Fundamental Change;
- (B) the adjusted conversion price following the Fundamental Change;
- (C) the amount of cash, securities and other consideration received by a Holder of Series L Preferred Stock upon conversion; and
- (D) the instructions a Holder must follow to exercise its conversion option in connection with such Fundamental Change.

(vi) To exercise its conversion option upon a Fundamental Change, a Holder must, no later than 5:00 p.m., New York City time on or before the date by which the conversion option upon the Fundamental Change must be exercised as specified in the notice delivered under clause (v) above, comply with the procedures set forth in Section 6(a)(v)(B) and indicate that it is exercising the Fundamental Change conversion option.

(vii) If a Holder does not elect to exercise its conversion option upon a Fundamental Change pursuant to this Section 6(d), the Holder will not be eligible to convert such Holder's shares at the Base Price and such Holder's shares of Series L Preferred Stock or successor security held by it will remain outstanding.

(viii) Upon a conversion upon a Fundamental Change, the Conversion Agent shall, except as otherwise provided in the instructions provided by the Holder thereof in the written notice provided to the Corporation or its successor as set forth in Section 6(a)(iv) above, deliver to the Holder such cash, securities or other property as are issuable with respect to the adjusted conversion price following the Fundamental Change.

(ix) In the event that a conversion upon a Fundamental Change is effected with respect to shares of Series L Preferred Stock or a successor security representing less than all the shares of Series L Preferred Stock or a successor security held by a Holder, upon such conversion the Corporation or its successor shall execute and the Conversion Agent shall, unless otherwise instructed in writing, countersign and deliver to the Holder thereof, at the expense of the Corporation, a certificate evidencing the shares of Series L Preferred Stock or such successor security held by the Holder as to which a conversion upon a Fundamental Change was not effected.

**Section 7. Anti-Dilution Adjustments.**

(a) The Conversion Rate shall be subject to the following adjustments.

(i) **Stock Dividend Distributions.** If the Corporation pays dividends or other distributions on the Common Stock in shares of Common Stock, then the Conversion Rate in effect immediately following the record date for such dividend or distribution will be multiplied by the following fraction:

$$\frac{OS_1}{OS_0}$$

Where,

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the Ex-Date for such dividend or distribution.

$OS_1$  = the sum of the number of shares of Common Stock outstanding immediately prior to the Ex-Date for such dividend or distribution plus the total number of shares of Common Stock constituting such dividend.

Notwithstanding the foregoing, no adjustment will be made for the issuance of the Common Stock as a dividend or distribution to all holders of Common Stock that is made in lieu of quarterly dividends or distributions to such holders, to the extent such dividend or distribution does not exceed the dividend threshold amount defined in clause (v) below. For purposes of this paragraph, the amount of any dividend or distribution will equal the number of shares being issued multiplied by the average VWAP of the Common Stock over each of the five consecutive Trading Days prior to the record date for such distribution.

(ii) **Subdivisions, Splits, and Combination of the Common Stock** If the Corporation subdivides, splits, or combines the shares of Common Stock, then the Conversion Rate in effect immediately following the effective date of such share subdivision, split, or combination will be multiplied by the following fraction:

$$\frac{OS_1}{OS_0}$$

Where,

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the effective date of such share subdivision, split, or combination.

$OS_1$  = the number of shares of Common Stock outstanding immediately after the opening of business on the effective date of such share subdivision, split, or combination.

(iii) **Issuance of Stock Purchase Rights.** If the Corporation issues to all holders of the shares of Common Stock rights or warrants (other than rights or warrants issued

pursuant to a dividend reinvestment plan or share purchase plan or other similar plans) entitling them, for a period of up to 60 days from the date of issuance of such rights or warrants, to subscribe for or purchase the shares of Common Stock (or securities convertible into shares of Common Stock) at less than (or having a conversion price per share less than) the Current Market Price on the date fixed for the determination of stockholders entitled to receive such rights or warrants, then the Conversion Rate in effect immediately following the close of business on the record date for such distribution will be multiplied by the following fraction:

$$\frac{OS_0 + X}{OS_0 + Y}$$

Where,

$OS_0$  = the number of shares of Common Stock outstanding at the close of business on the record date for such distribution.

X = the total number of shares of Common Stock issuable pursuant to such rights or warrants (or upon conversion of such securities).

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights or warrants (or the conversion price for such securities) divided by the Current Market Price.

To the extent that such rights or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights or warrants upon the exercise of such rights or warrants, the Conversion Rate shall be readjusted to such Conversion Rate that would then be in effect had the adjustment made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In determining the aggregate offering price payable for such shares of Common Stock, the Conversion Agent will take into account any consideration received for such rights or warrants and the value of such consideration (if other than cash, to be determined by the Board).

(iv) **Debt or Asset Distributions.** If the Corporation distributes to all holders of shares of Common Stock evidences of indebtedness, shares of capital stock (other than Common Stock), securities, or other assets (excluding any dividend or distribution referred to in clauses (i) or (ii) above, any rights or warrants referred to in clause (iii) above, any dividend or distribution paid exclusively in cash, any consideration payable in connection with a tender or exchange offer made by the Corporation or any of its subsidiaries, and any dividend of shares of capital stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit in the case of certain spin-off transactions as described below), then the Conversion Rate in effect immediately following the close of business on the record date for such distribution will be multiplied by the following fraction:

$$\frac{SP_0}{SP_0 - FMV}$$

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Where,

$SP_0$  = the Current Market Price per share of Common Stock on the Ex-Date.

FMV = the fair market value of the portion of the distribution applicable to one share of Common Stock on the date immediately preceding the Ex-Date as determined by the Board.

In a spin-off, where the Corporation makes a distribution to all holders of shares of Common Stock consisting of capital stock of any class or series, or similar equity interests of, or relating to, a subsidiary or other business unit, the Conversion Rate will be adjusted on the fifteenth Trading Day after the effective date of the distribution by multiplying such Conversion Rate in effect immediately prior to such fifteenth Trading Day by the following fraction:

$$\frac{MP_0 + MP_s}{MP_0}$$

Where,

$MP_0$  = the average of the VWAP of the Common Stock over each of the first ten Trading Days commencing on and including the fifth Trading Day following the effective date of such distribution.

$MP_s$  = the average of the VWAP of the capital stock or equity interests representing the portion of the distribution applicable to one share of Common Stock over each of the first ten Trading Days commencing on and including the fifth Trading Day following the effective date of such distribution, or, if not traded on a national or regional securities exchange or over-the-counter market, the fair market value of the capital stock or equity interests representing the portion of the distribution applicable to one share of Common Stock on such date as determined by the Board.

(v) **Cash Distributions.** If the Corporation makes a distribution consisting exclusively of cash to all holders of the Common Stock, excluding (a) any cash dividend on the Common Stock to the extent that the aggregate cash dividend per share of the Common Stock does not exceed \$0.64 in any fiscal quarter (the “*Dividend Threshold Amount*”), (b) any cash that is distributed in a Reorganization Event or as part of a spin-off referred to in clause (iv) above, (c) any dividend or distribution, in connection with the Corporation’s liquidation, dissolution, or winding up, and (d) any consideration payable in connection with a tender or exchange offer made by the Corporation or any of its subsidiaries, then in each event, the Conversion Rate in effect immediately following the record date for such distribution will be multiplied by the following fraction:

$$\frac{SP_0}{SP_0 - DIV}$$



Where,

$SP_0$  = the VWAP per share of Common Stock on the Trading Day immediately preceding the Ex-Date.

DIV = the cash amount per share of Common Stock of the dividend or distribution, as determined pursuant to the following paragraph.

If an adjustment is required to be made as set forth in this clause as a result of a distribution (1) that is a regularly scheduled quarterly dividend, such adjustment would be based on the amount by which such dividend exceeds the Dividend Threshold Amount or (2) that is not a regularly scheduled quarterly dividend, such adjustment would be based on the full amount of such distribution.

The Dividend Threshold Amount is subject to adjustment on an inversely proportional basis whenever the Conversion Rate is adjusted; *provided* that no adjustment will be made to the Dividend Threshold Amount for any adjustment made to the Conversion Rate pursuant to this clause (v).

(vi) **Self-Tender Offers and Exchange Offers** If the Corporation or any of its subsidiaries successfully completes a tender or exchange offer for the Common Stock where the cash and the value of any other consideration included in the payment per share of the Common Stock exceeds the VWAP per share of the Common Stock on the Trading Day immediately succeeding the expiration of the tender or exchange offer, then the Conversion Rate in effect at the close of business on such immediately succeeding Trading Day will be multiplied by the following fraction:

$$\frac{AC + (SP_0 \times OS_1)}{OS_0 \times SP_0}$$

Where,

$SP_0$  = the VWAP per share of Common Stock on the Trading Day immediately succeeding the expiration of the tender or exchange offer.

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the expiration of the tender or exchange offer, including any shares validly tendered and not withdrawn (the "Purchased Shares").

$OS_1$  = the number of shares of Common Stock outstanding immediately after the expiration of the tender or exchange offer, less any Purchased Shares.

AC = the aggregate cash and fair market value of the other consideration payable in the tender or exchange offer, as determined by the Board.

In the event that the Corporation, or one of its subsidiaries, is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Corporation, or such subsidiary, is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be readjusted to be such Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made.

(vii) **Rights Plans.** To the extent that the Corporation has a rights plan in effect with respect to the Common Stock on any Conversion Date, upon conversion of any shares of the Series L Preferred Stock, Holders will receive, in addition to the shares of Common Stock, the rights under the rights plan, unless, prior to such Conversion Date, the rights have separated from the shares of Common Stock, in which case the Conversion Rate will be adjusted at the time of separation as if the Corporation had made a distribution to all holders of the Common Stock as described in clause (iv) above, subject to readjustment in the event of the expiration, termination, or redemption of such rights.

(b) The Corporation may make such increases in the Conversion Rate, in addition to any other increases required by this Section 7, if the Corporation deems it advisable in order to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of shares of Common Stock (or issuance of rights or warrants to acquire shares of Common Stock) or from any event treated as such for income tax purposes or for any other reason.

(c)(i) All adjustments to the Conversion Rate shall be calculated to the nearest 1/10,000th of a share of Common Stock. No adjustment in the Conversion Rate will be made unless such adjustment would require an increase or decrease of at least one percent therein; *provided*, that any adjustments which by reason of this subparagraph are not required to be made shall be carried forward and taken into account in any subsequent adjustment; *provided further* that on the Optional Conversion Date, the Make-Whole Acquisition Effective Date or the effective date of a Fundamental Change, adjustments to the Conversion Rate will be made with respect to any such adjustment carried forward and which has not been taken into account before such date.

(ii) No adjustment to the Conversion Rate shall be made if Holders may participate in the transaction that would otherwise give rise to an adjustment, as a result of holding the Series L Preferred Stock, without having to convert the Series L Preferred Stock, as if they held the full number of shares of Common Stock into which their shares of the Series L Preferred Stock may then be converted.

(iii) The Applicable Conversion Rate will not be adjusted:

(A) upon the issuance of any shares of the Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Corporation's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(B) upon the issuance of any shares of the Common Stock or rights or warrants to purchase those shares pursuant to any present or future employee, director, or consultant benefit plan or program of or assumed by the Corporation or any of its subsidiaries;

(C) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the shares of the Series L Preferred Stock were first issued;

(D) for a change in the par value or no par value of the Common Stock; or

(E) for accrued and unpaid dividends on the Series L Preferred Stock.

(d) Whenever the Conversion Rate is to be adjusted in accordance with Section 7(a) or Section 7(b), the Corporation shall: (i) compute the Conversion Rate in accordance with Section 7(a) or Section 7(b), taking into account the one percent threshold set forth in Section 7(c) hereof, and prepare and transmit to the Transfer Agent an officer's certificate setting forth the Conversion Rate, the method of calculation thereof in reasonable detail, and the facts requiring such adjustment and upon which such adjustment is based; (ii) as soon as practicable following the occurrence of an event that requires an adjustment to the Conversion Rate pursuant to Section 7(a) or Section 7(b), taking into account the one percent threshold set forth in Section 7(c) hereof (or if the Corporation is not aware of such occurrence, as soon as practicable after becoming so aware), provide, or cause to be provided, a written notice to the Holders of the occurrence of such event; and (iii) as soon as practicable following the determination of the revised Conversion Rate in accordance with Section 7(a) or Section 7(b) hereof, provide, or cause to be provided, a written notice to the Holders setting forth in reasonable detail the method by which the adjustment to the Conversion Rate was determined and setting forth the revised Conversion Rate.

#### **Section 8. Reorganization Events.**

(a) In the event of:

(i) the Corporation's consolidation or merger with or into another Person, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property of the Corporation or another Person;

(ii) any sale, transfer, lease, or conveyance to another Person of all or substantially all of the Corporation's property and assets, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property; or

(iii) any statutory exchange of the Corporation's securities with another Person (other than in connection with a merger or acquisition);

(any such event specified in this Section 8(a), a "*Reorganization Event*"); each share of Series L Preferred Stock outstanding immediately prior to such Reorganization Event will, without the consent of Holders, become convertible into the kind of securities, cash, and other property receivable in such Reorganization Event by a holder of the shares of Common Stock that was not the counterparty to the Reorganization Event or an affiliate of such other party (such securities, cash, and other property, the "*Exchange Property*").

(b) In the event that holders of the shares of the Common Stock have the opportunity to elect the form of consideration to be received in such transaction, the consideration that the Holders are entitled to receive will be deemed to be the types and amounts of consideration received by the majority of the holders of the shares of the Common Stock that affirmatively make an election (or of all such holders if none make an election). On each Conversion Date following a Reorganization Event, the Conversion Rate then in effect will be applied to the value on such Conversion Date of the securities, cash, or other property received per share of Common Stock, determined as set forth above. The amount of Exchange Property receivable upon conversion of any Series L Preferred Stock in accordance with Section 5, Section 6(b), Section 6(c) or Section 6(d) hereof shall be determined based upon the then Applicable Conversion Rate.

(c) The above provisions of this Section 8 shall similarly apply to successive Reorganization Events and the provisions of Section 7 shall apply to any shares of capital stock of the Corporation (or any successor) received by the holders of the Common Stock in any such Reorganization Event.

(d) The Corporation (or any successor) shall, within 20 days of the occurrence of any Reorganization Event, provide written notice to the Holders of such occurrence of such event and of the kind and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section 8.

#### **Section 9. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series L Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders before any distribution of the assets of the Corporation may be made to the Holders of any Junior Stock to receive in full a liquidating distribution in the amount of the liquidation preference of \$1,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. After payment of this liquidating distribution, the holders of Series L Preferred Stock will not be entitled to any further participation in any distribution of the Corporation's assets in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. Distributions will be made only to the extent of the Corporation's assets remaining available after satisfaction of all liabilities to creditors and subject to the rights of holders of any securities ranking senior to the Series L Preferred Stock and *pro rata* as to the Series L Preferred Stock and any other shares of the Corporation's stock ranking equally as to such distribution.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series L Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series L Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series L Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series L Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 9, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or business of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

**Section 10. Redemption.**

The Series L Preferred Stock shall not be redeemable either at the Corporation's option or at the option of the Holders at any time.

**Section 11. Voting Rights.**

**(a) General.** The holders of Series L Preferred Stock shall not be entitled to vote on any matter except as set forth in Section 11(b) below or as required by Delaware law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series L Preferred Stock or any other class or series of preferred stock ranking equally with Series L Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted by this Section 11 have been conferred ("*Voting Parity Securities*") and are exercisable, have not been declared and paid for the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not (a "*Nonpayment*")), the number of directors constituting the Board shall be increased by two, and the Holders of the outstanding shares of Series L Preferred Stock voting as a class with holders of any series of the Corporation's preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist, shall have the right, voting separately as a single class without regard to series, with voting rights allocated *pro rata* based on liquidation preference, to the exclusion of the holders of Common Stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and provided further that the Board shall at no time include more than two such directors. Each such director elected by the holders of shares of Series L Preferred Stock and any Voting Parity Securities is a "*Preferred Director*." Any Preferred Director elected by the holders of the Series L Preferred Stock and any Parity Stock

may only be removed by the vote of the holders of record of the outstanding Series L Preferred Stock and any such Parity Stock, voting together as a single and separate class, at a meeting of the Corporation's stockholders called for that purpose. Any vacancy created by the removal of any Preferred Director may be filled only by the vote of the holders of the outstanding Series L Preferred Stock and any such Parity Stock, voting together as a single and separate class.

Notwithstanding the foregoing, without the consent of the Holders, so long as such action does not adversely affect the interests of the Holders, the Corporation may amend, alter, supplement, or repeal any terms of the Series L Preferred Stock for the following purposes:

- (1) to cure any ambiguity, or to cure, correct, or supplement any provision contained in this Certificate of Designations that may be ambiguous, defective, or inconsistent; or
- (2) to make any provision with respect to matters or questions relating to the Series L Preferred Stock that is not inconsistent with the provisions of this Certificate of Designations.

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the Holders Series L Preferred Stock and any Voting Parity Securities with exercisable voting rights, called as provided herein. At any time after the special voting right has vested pursuant to Section 11(b)(i) above, the secretary of the Corporation may, and upon the written request of any Holder of Series L Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series L Preferred Stock and any Voting Parity Securities with exercisable voting rights, for the election of the two directors to be elected by them as provided in Section 11(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any Holder of Series L Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 11(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 11(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the Holders of the Series L Preferred Stock (voting together on a single and separate class with holders of any Voting Parity Securities, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** The voting rights described above will terminate, except as provided by law, upon the earlier of (A) the conversion of all of the Series L Preferred Stock or (B) the payment of full dividends on the Series L Preferred Stock and any other series of the Corporation's preferred stock, if any, for the equivalent of at least four quarterly Dividend Periods (but subject to revesting in the case of any similar non-payment of dividends in respect of future Dividend Periods) following a Nonpayment on the Series L Preferred Stock and any other series of the Corporation's preferred stock. Upon termination of the special voting right described above, the terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series L Preferred Stock (voting together as a single and separate class with holders of any Voting Parity Securities, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist).

**Section 12. Fractional Shares.**

(a) No fractional shares of Common Stock will be issued as a result of any conversion of shares of Series L Preferred Stock.

(b) In lieu of any fractional share of Common Stock otherwise issuable in respect of any conversion at the Corporation's option pursuant to Section 5 hereof or any conversion at the option of the Holder pursuant to Section 6(b), Section 6(c) or Section 6(d) hereof, the Corporation shall pay an amount in cash (computed to the nearest cent) equal to the same fraction of the Closing Price of the Common Stock determined as of the second Trading Day immediately preceding the effective date of conversion.

(c) If more than one share of the Series L Preferred Stock is surrendered for conversion at one time by or for the same Holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series L Preferred Stock so surrendered.

**Section 13. Reservation of Common Stock.**

(a) The Corporation shall at all times reserve and keep available out of its authorized and unissued Common Stock or shares held in the treasury by the Corporation, solely for issuance upon the conversion of shares of Series L Preferred Stock as provided in this Certificate of Designations, free from any preemptive or other similar rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series L Preferred Stock then outstanding, at the Applicable Conversion Price subject to adjustment as described under Section 7. For purposes of this Section 13(a), the number of shares of Common Stock that shall be deliverable upon the conversion of all outstanding shares of Series L Preferred Stock shall be computed as if at the time of computation all such outstanding shares were held by a single Holder.

(b) Notwithstanding the foregoing, the Corporation shall be entitled to deliver upon conversion of shares of Series L Preferred Stock, as herein provided, shares of Common

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Stock acquired by the Corporation (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as any such acquired shares are free and clear of all liens, charges, security interests or encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(c) All shares of Common Stock delivered upon conversion of the Series L Preferred Stock shall be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(d) Prior to the delivery of any securities that the Corporation shall be obligated to deliver upon conversion of the Series L Preferred Stock, the Corporation shall use its reasonable best efforts to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(e) The Corporation hereby covenants and agrees that, if at any time the Common Stock shall be listed on the New York Stock Exchange or any other national securities exchange or automated quotation system, the Corporation will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all the Common Stock issuable upon conversion of the Series L Preferred Stock; *provided, however*, that if the rules of such exchange or automated quotation system permit the Corporation to defer the listing of such Common Stock until the first conversion of Series L Preferred Stock into Common Stock in accordance with the provisions hereof, the Corporation covenants to list such Common Stock issuable upon conversion of the Series L Preferred Stock in accordance with the requirements of such exchange or automated quotation system at such time.

**Section 14. Preemption.** The Holders of Series L Preferred Stock shall not have any rights of preemption.

**Section 15. Rank.** Notwithstanding anything set forth in the Corporation's Amended and Restated Certificate of Incorporation or this Certificate of Designations to the contrary, the Board, the Committee or any authorized committee of the Board, without the vote of the Holders of the Series L Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series L Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 16. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell shares of Series L Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board or any duly authorized committee of the Board may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.



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**Section 17. Unissued or Reacquired Shares.** Shares of Series L Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series and shall be available for subsequent issuance.

**Section 18. No Sinking Fund.** Shares of Series L Preferred Stock are not subject to the operation of a sinking fund.

**CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES M  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At meetings duly convened and held on December 11, 2007, January 23, 2008 and April 23, 2008, the Board of Directors of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Special Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on April 25, 2008, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in the Certificate of Designations attached hereto as Exhibit A, which is incorporated herein and made a part of these resolutions by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 29th day of April, 2008.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

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EXHIBIT A

CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES M  
OF  
BANK OF AMERICA CORPORATION

**Section 1. Designation.** The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M” (the “*Series M Preferred Stock*”). Each share of Series M Preferred Stock shall be identical in all respects to every other share of Series M Preferred Stock. Series M Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series M Preferred Stock shall be 160,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series M Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series M Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series M Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Calculation Agent*” shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series M Preferred Stock during the Floating Rate Period (as defined below).

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

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“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series M Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding), (e) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding), (f) the Corporation’s 6.625% Non-Cumulative Preferred Stock, Series I, (g) the Corporation’s 7.25% Non-Cumulative Preferred Stock, Series J, (h) the Corporation’s Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (i) the Corporation’s 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, and (j) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series M Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series M Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series M Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination*”).

*Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01”, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series M Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series M Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$25,000 per share of Series M Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on each May 15 and November 15, beginning on November 15, 2008, and (y) for the Floating Rate Period, quarterly in arrears on each February 15, May 15, August 15, and November 15, beginning on August 15, 2018; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series M Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series M Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 8.125%, for each Dividend Period from the issue date to, but excluding, May 15, 2018 (the “*Fixed Rate Period*”), and (2) Three-Month LIBOR plus a spread of 3.64%, for each Dividend Period from, and including, May 15, 2018 to the date of redemption of the Series M Preferred

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Stock (the “*Floating Rate Period*”). The record date for payment of dividends on the Series M Preferred Stock shall be the last day of the calendar month immediately preceding the month in which the Dividend Payment Date falls. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series M Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series M Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series M Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series M Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series M Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a *pro rata* portion, of the Series M Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series M Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation’s Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series M Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series M Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series M Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series M Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the

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shares of Series M Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series M Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series M Preferred Stock shall not be entitled to participate in any such dividend.

**Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series M Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series M Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series M Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series M Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series M Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series M Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series M Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

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**Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series M Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after the Dividend Payment Date on May 15, 2018, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series M Preferred Stock shall be \$25,000 per share plus dividends that have been declared but not paid.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series M Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series M Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series M Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series M Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series M Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series M Preferred Stock at the time outstanding, the shares of Series M Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series M Preferred Stock in proportion to the number of Series M Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series M Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for



redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depositary Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.**

**(a) General.** The holders of Series M Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by Delaware law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series M Preferred Stock or any other class or series of preferred stock that ranks on parity with Series M Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors of the Corporation shall be increased by two, and the holders of the Series M Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors of the Corporation shall at no time include more than two such directors. Each such director elected by the holders of shares of Series M Preferred Stock and any other class or series of preferred stock that ranks on parity with the Series M Preferred Stock as to payment of dividends and having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series M Preferred Stock and any other class or series of our stock that ranks on parity with Series M Preferred Stock as to

payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series M Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series M Preferred Stock and any other class or series of preferred stock that ranks on parity with Series M Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series M Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series M Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series M Preferred Stock and any other class or series of preferred stock that ranks on parity with Series M Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series M Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series M Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**Section 8. Preemption and Conversion.** The holders of Series M Preferred Stock shall not have any rights of preemption or rights to convert such Series M Preferred Stock into shares of any other class of capital stock of the Corporation.

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**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series M Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series M Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series M Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series M Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series M Preferred Stock are not subject to the operation of a sinking fund.

**CERTIFICATE OF DESIGNATIONS  
OF  
8.20% NON-CUMULATIVE PREFERRED STOCK, SERIES H  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At meetings duly convened and held on December 11, 2007, January 23, 2008 and April 23, 2008, the Board of Directors of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Special Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on May 21, 2008, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's 8.20% Non-Cumulative Preferred Stock, Series H, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in the Certificate of Designations attached hereto as Exhibit A, which is incorporated herein and made a part of these resolutions by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 22nd day of May, 2008.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

EXHIBIT A

CERTIFICATE OF DESIGNATIONS

OF

8.20% NON-CUMULATIVE PREFERRED STOCK, SERIES H

OF

BANK OF AMERICA CORPORATION

**Section 1. Designation.** The designation of the series of preferred stock shall be “8.20% Non-Cumulative Preferred Stock, Series H” (the “*Series H Preferred Stock*”). Each share of Series H Preferred Stock shall be identical in all respects to every other share of Series H Preferred Stock. Series H Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series H Preferred Stock shall be 124,200. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series H Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series H Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series H Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series H Preferred

Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding), (e) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding), (f) the Corporation’s 6.625% Non-Cumulative Preferred Stock, Series I, (g) the Corporation’s 7.25% Non-Cumulative Preferred Stock, Series J, (h) the Corporation’s Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (i) the Corporation’s 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (j) the Corporation’s Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, and (k) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series H Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series H Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series H Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series H Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends at a rate per annum equal to 8.20% on the liquidation preference of \$25,000 per share of Series H Preferred Stock, and no more, payable quarterly in arrears on each February 1, May 1, August 1 and November 1; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise declared and payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series H Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series H Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate per annum equal to 8.20%. The record date for payment of dividends on the Series H Preferred Stock shall be the fifteenth day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series H Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series H

Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Series H Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series H Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series H Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series H Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series H Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series H Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series H Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series H Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series H Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series H Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series H Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series H Preferred Stock shall not be entitled to participate in any such dividend.

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### Section 5. Liquidation Rights.

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series H Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series H Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series H Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series H Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series H Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series H Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series H Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

### Section 6. Redemption.

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series H Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after the Dividend Payment Date on May 1, 2013, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series H Preferred Stock shall be \$25,000 per share plus dividends that have been declared but not paid.



**(b) Notice of Redemption.** Notice of every redemption of shares of Series H Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series H Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series H Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series H Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series H Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series H Preferred Stock at the time outstanding, the shares of Series H Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series H Preferred Stock in proportion to the number of Series H Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series H Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the

Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.**

**(a) General.** The holders of Series H Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by Delaware law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series H Preferred Stock or any other class or series of preferred stock that ranks on parity with Series H Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid, as to any class or series, for the equivalent of at least six quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors of the Corporation shall be increased by two, and the holders of the Series H Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors of the Corporation shall at no time include more than two such directors. Each such director elected by the holders of shares of Series H Preferred Stock and any other class or series of preferred stock that ranks on parity with the Series H Preferred Stock as to payment of dividends and having equivalent voting rights is a "*Preferred Director.*"

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series H Preferred Stock and any other class or series of our stock that ranks on parity with Series H Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series H Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series H Preferred Stock and any other class or series of preferred stock that ranks on parity with Series H Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as

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provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series H Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series H Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series H Preferred Stock and any other class or series of preferred stock that ranks on parity with Series H Preferred Stock as to payment of dividends, if any, for at least four quarterly Dividend Periods, then the right of the holders of Series H Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series H Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**Section 8. Preemptive Rights and Conversion.** The holders of Series H Preferred Stock shall not have any preemptive rights or rights to convert such Series H Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series H Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series H Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

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**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series H Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series H Preferred Stock not issued or which have been redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series H Preferred Stock are not subject to the operation of a sinking fund.

**CERTIFICATE OF DESIGNATIONS**

**OF**

**FIXED RATE CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES N**

**OF**

**BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), in accordance with the provisions of Sections 141 and 151 of the General Corporation Law of the State of Delaware, does hereby certify:

At meetings duly convened and held by the board of directors of the Corporation (the "Board of Directors") on July 23, 2008 and October 15, 2008, the Board of Directors duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's Preferred Stock, and (b) appointing a Special Committee (the "Committee") of the Board of Directors to act on behalf of the Board of Directors in establishing the number of authorized shares, the dividend rate, the voting and other powers, designations, preferences and rights, and the qualifications, limitations and restrictions thereof, of such series of Preferred Stock.

Thereafter, on October 26, 2008, the Committee duly adopted the following resolution creating a series of 600,000 shares of Preferred Stock of the Corporation designated as "Fixed Rate Cumulative Perpetual Preferred Stock, Series N" by written consent

**RESOLVED**, that pursuant to the provisions of the certificate of incorporation and the bylaws of the Corporation and applicable law, and the resolutions adopted by the Board of Directors, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

Part 1. Designation and Number of Shares. There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Fixed Rate Cumulative Perpetual Preferred Stock, Series N" (the "Designated Preferred Stock"). The authorized number of shares of Designated Preferred Stock shall be 600,000.

Part 2. Standard Provisions. The Standard Provisions contained in Annex A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this Certificate of Designations to the same extent as if such provisions had been set forth in full herein.

Part 3. Definitions. The following terms are used in this Certificate of Designations (including the Standard Provisions in Annex A hereto) as defined below:

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(a) "Common Stock" means the common stock, par value \$0.01 per share, of the Corporation.

(b) "Dividend Payment Date" means February 15, May 15, August 15 and November 15 of each year.

(c) "Junior Stock" means the Common Stock, and any other class or series of stock of the Corporation the terms of which expressly provide that it ranks junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation.

(d) "Liquidation Amount" means \$25,000 per share of Designated Preferred Stock.

(e) "Minimum Amount" means \$3,750,000,000.

(f) "Parity Stock" means any class or series of stock of the Corporation (other than Designated Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include the Corporation's (i) 7% Cumulative Redeemable Preferred Stock, Series B; (ii) 6.204% Non-Cumulative Preferred Stock, Series D; (iii) Floating Rate Non-Cumulative Preferred Stock, Series E; (iv) Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding); (v) Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding); (vi) 8.20% Non-Cumulative Preferred Stock, Series H; (vii) 6.625% Non-Cumulative Preferred Stock, Series I; (viii) 7.25% Non-Cumulative Preferred Stock, Series J; (ix) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K; (x) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L; and (xi) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M.

(g) "Signing Date" means October 26, 2008.

Part. 4. Certain Voting Matters. Holders of shares of Designated Preferred Stock will be entitled to one vote for each such share on any matter on which holders of Designated Preferred Stock are entitled to vote, including any action by written consent.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, Bank of America Corporation has caused this Certificate of Designations to be signed by Teresa M. Brenner, its Associate General Counsel, this 27th day of October, 2008.

BANK OF AMERICA CORPORATION

By: /s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

**STANDARD PROVISIONS**

Section 1. General Matters. Each share of Designated Preferred Stock shall be identical in all respects to every other share of Designated Preferred Stock. The Designated Preferred Stock shall be perpetual, subject to the provisions of Section 5 of these Standard Provisions that form a part of the Certificate of Designations. The Designated Preferred Stock shall rank equally with Parity Stock and shall rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Corporation.

Section 2. Standard Definitions. As used herein with respect to Designated Preferred Stock:

(a) “Applicable Dividend Rate” means (i) during the period from the Original Issue Date to, but excluding, the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 5% per annum and (ii) from and after the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 9% per annum.

(b) “Appropriate Federal Banking Agency” means the “appropriate Federal banking agency” with respect to the Corporation as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

(c) “Business Combination” means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Corporation’s stockholders.

(d) “Business Day” means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

(e) “Bylaws” means the bylaws of the Corporation, as they may be amended from time to time.

(f) “Certificate of Designations” means the Certificate of Designations or comparable instrument relating to the Designated Preferred Stock, of which these Standard Provisions form a part, as it may be amended from time to time.

(g) “Charter” means the Corporation’s certificate or articles of incorporation, articles of association, or similar organizational document.

(h) “Dividend Period” has the meaning set forth in Section 3(a).

(i) “Dividend Record Date” has the meaning set forth in Section 3(a).

(j) “Liquidation Preference” has the meaning set forth in Section 4(a).



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(k) “Original Issue Date” means the date on which shares of Designated Preferred Stock are first issued.

(l) “Preferred Director” has the meaning set forth in Section 7(b).

(m) “Preferred Stock” means any and all series of preferred stock of the Corporation, including the Designated Preferred Stock.

(n) “Qualified Equity Offering” means the sale and issuance for cash by the Corporation to persons other than the Corporation or any of its subsidiaries after the Original Issue Date of shares of perpetual Preferred Stock, Common Stock or any combination of such stock, that, in each case, qualify as and may be included in Tier 1 capital of the Corporation at the time of issuance under the applicable risk-based capital guidelines of the Corporation’s Appropriate Federal Banking Agency (other than any such sales and issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to October 13, 2008).

(o) “Share Dilution Amount” has the meaning set forth in Section 3(b).

(p) “Standard Provisions” mean these Standard Provisions that form a part of the Certificate of Designations relating to the Designated Preferred Stock.

(q) “Successor Preferred Stock” has the meaning set forth in Section 5(a).

(r) “Voting Parity Stock” means, with regard to any matter as to which the holders of Designated Preferred Stock are entitled to vote as specified in Sections 7(a) and 7(b) of these Standard Provisions that form a part of the Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

### Section 3. Dividends.

(a) Rate. Holders of Designated Preferred Stock shall be entitled to receive, on each share of Designated Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate on (i) the Liquidation Amount per share of Designated Preferred Stock and (ii) the amount of accrued and unpaid dividends for any prior Dividend Period on such share of Designated Preferred Stock, if any. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (*i.e.*, no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 20 calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but

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excluding, the next Dividend Payment Date is a “Dividend Period”, provided that the initial Dividend Period shall be the period from and including the Original Issue Date to, but excluding, the next Dividend Payment Date.

Dividends that are payable on Designated Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on Designated Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Designated Preferred Stock on any Dividend Payment Date will be payable to holders of record of Designated Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of Designated Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Designated Preferred Stock as specified in this Section 3 (subject to the other provisions of the Certificate of Designations).

(b) Priority of Dividends. So long as any share of Designated Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than dividends payable solely in shares of Common Stock) or Parity Stock, subject to the immediately following paragraph in the case of Parity Stock, and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Corporation or any of its subsidiaries unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Designated Preferred Stock on the applicable record date). The foregoing limitation shall not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business (including purchases to offset the Share Dilution Amount (as defined below) pursuant to a publicly announced repurchase plan) and consistent with past practice, *provided* that any purchases to offset the Share Dilution Amount shall in no event exceed the Share Dilution Amount; (ii) purchases or other acquisitions by a broker-dealer subsidiary of the Corporation solely for the purpose of market-making, stabilization or customer facilitation transactions in Junior Stock or Parity Stock in the ordinary course of its business; (iii) purchases by a broker-dealer subsidiary of the Corporation of capital stock of the Corporation for resale pursuant to an offering by the Corporation of such capital stock underwritten by such broker-dealer subsidiary; (iv) any dividends or distributions of rights or Junior Stock in connection with a stockholders’

rights plan or any redemption or repurchase of rights pursuant to any stockholders' rights plan; (v) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians; and (vi) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock. "Share Dilution Amount" means the increase in the number of diluted shares outstanding (determined in accordance with generally accepted accounting principles in the United States, and as measured from the date of the Corporation's consolidated financial statements most recently filed with the Securities and Exchange Commission prior to the Original Issue Date) resulting from the grant, vesting or exercise of equity-based compensation to employees and equitably adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon Designated Preferred Stock and any shares of Parity Stock, all dividends declared on Designated Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the shares of Designated Preferred Stock (including, if applicable as provided in Section 3(a) above, dividends on such amount) and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other. If the Board of Directors or a duly authorized committee of the Board of Directors determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Corporation will provide written notice to the holders of Designated Preferred Stock prior to such Dividend Payment Date.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Designated Preferred Stock shall not be entitled to participate in any such dividends.

#### Section 4. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Designated Preferred Stock shall be entitled to receive for each share of Designated Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, subject to the rights of any creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to Designated Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (i) the Liquidation Amount per share and (ii) the amount of any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount), whether or not declared, to the date of payment (such amounts collectively, the "Liquidation Preference").

(b) Partial Payment. If in any distribution described in Section 4(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution, holders of Designated Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 4, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Designated Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

#### Section 5. Redemption.

(a) Optional Redemption. Except as provided below, the Designated Preferred Stock may not be redeemed prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date. On or after the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable

as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption.

Notwithstanding the foregoing, prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption; *provided* that (x) the Corporation (or any successor by Business Combination) has received aggregate gross proceeds of not less than the Minimum Amount (plus the "Minimum Amount" as defined in the relevant certificate of designations for each other outstanding series of preferred stock of such successor that was originally issued to the United States Department of the Treasury (the "Successor Preferred Stock") in connection with the Troubled Asset Relief Program Capital Purchase Program) from one or more Qualified Equity Offerings (including Qualified Equity Offerings of such successor), and (y) the aggregate redemption price of the Designated Preferred Stock (and any Successor Preferred Stock) redeemed pursuant to this paragraph may not exceed the aggregate net cash proceeds received by the Corporation (or any successor by Business Combination) from such Qualified Equity Offerings (including Qualified Equity Offerings of such successor).

The redemption price for any shares of Designated Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

(b) No Sinking Fund. The Designated Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Designated Preferred Stock will have no right to require redemption or repurchase of any shares of Designated Preferred Stock.

(c) Notice of Redemption. Notice of every redemption of shares of Designated Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Designated Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Corporation or any other similar facility, notice of

redemption may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Designated Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(d) Partial Redemption. In case of any redemption of part of the shares of Designated Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Designated Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

(f) Status of Redeemed Shares. Shares of Designated Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Designated Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Designated Preferred Stock).

Section 6. Conversion. Holders of Designated Preferred Stock shares shall have no right to exchange or convert such shares into any other securities.

Section 7. Voting Rights.

(a) General. The holders of Designated Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) Preferred Stock Directors. Whenever, at any time or times, dividends payable on the shares of Designated Preferred Stock have not been paid for an aggregate of six quarterly Dividend Periods or more, whether or not consecutive, the authorized number of directors of the Corporation shall automatically be increased by two and the holders of the Designated Preferred Stock shall have the right, with holders of shares of any one or more other classes or series of Voting Parity Stock outstanding at the time, voting together as a class, to elect two directors (hereinafter the "Preferred Directors" and each a "Preferred Director") to fill such newly created directorships at the Corporation's next annual meeting of stockholders (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting of stockholders until all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been declared and paid in full at which time such right shall terminate with respect to the Designated Preferred Stock, except as herein or by law expressly provided, subject to revesting in the event of each and every subsequent default of the character above mentioned; *provided* that it shall be a qualification for election for any Preferred Director that the election of such Preferred Director shall not cause the Corporation to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Corporation may then be listed or traded that listed or traded companies must have a majority of independent directors. Upon any termination of the right of the holders of shares of Designated Preferred Stock and Voting Parity Stock as a class to vote for directors as provided above, the Preferred Directors shall cease to be qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of Preferred Directors elected pursuant hereto. Any Preferred Director may be removed at any time, with or without cause, and any vacancy created thereby may be filled, only by the affirmative vote of the holders a majority of the shares of Designated Preferred Stock at the time outstanding voting separately as a class together with the holders of shares of Voting Parity Stock, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.

(c) Class Voting Rights as to Particular Matters. So long as any shares of Designated Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least 66 <sup>2</sup>/<sub>3</sub>% of the shares of Designated Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior Stock. Any amendment or alteration of the Certificate of Designations for the Designated Preferred Stock or the Charter to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Corporation ranking senior to Designated Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(ii) Amendment of Designated Preferred Stock. Any amendment, alteration or repeal of any provision of the Certificate of Designations for the Designated Preferred Stock or the Charter (including, unless no vote on such merger or consolidation is required by Section 7(c)(iii) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Designated Preferred Stock; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Designated Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Designated Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Designated Preferred Stock immediately prior to such consummation, taken as a whole;

*provided, however*, that for all purposes of this Section 7(c), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Designated Preferred Stock necessary to satisfy preemptive or similar rights granted by the Corporation to other persons prior to the Signing Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking equally with and/or junior to Designated Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Designated Preferred Stock.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Designated Preferred Stock shall be required pursuant to Section 7(c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of the Designated Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 5 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the holders of Designated Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to



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time, which rules and procedures shall conform to the requirements of the Charter, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Designated Preferred Stock is listed or traded at the time.

Section 8. Record Holders. To the fullest extent permitted by applicable law, the Corporation and the transfer agent for Designated Preferred Stock may deem and treat the record holder of any share of Designated Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

Section 9. Notices. All notices or communications in respect of Designated Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Corporation or any similar facility, such notices may be given to the holders of Designated Preferred Stock in any manner permitted by such facility.

Section 10. No Preemptive Rights. No share of Designated Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

Section 11. Replacement Certificates. The Corporation shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Corporation.

Section 12. Other Rights. The shares of Designated Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Charter or as provided by applicable law.

**CERTIFICATE OF AMENDMENT  
TO THE  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 242  
of the General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Company"), does hereby certify that:

1. The Amended and Restated Certificate of Incorporation of the Company is hereby amended by changing the number of shares of stock the Company is authorized to issue, so that, the first sentence of Article 3 thereof shall read as follows:

"3. The number of shares, par value \$0.01 per share, the Company is authorized to issue is Ten Billion One Hundred Million (10,100,000,000), divided into the following classes:

<u>Class</u>	<u>Number of Shares</u>
Common	10,000,000,000
Preferred	100,000,000."

2. The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Company has caused this Certificate of Amendment to be executed by a duly authorized officer on this 9<sup>th</sup> day of December, 2008.

BANK OF AMERICA CORPORATION

By: /s/ Teresa M. Brenner

Name: Teresa M. Brenner

Title: Associate General Counsel

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**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS**  
**Pursuant to Section 151 of the**  
**General Corporation Law of the State of Delaware**

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 1**  
**(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 1**

(1) Number of Shares and Designation. 21,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as Floating Rate Non-Cumulative Preferred Stock, Series 1 (hereinafter called the "Preferred Stock, Series 1").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 1, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 28, May 28, August 28 and November 28 (the "Payment Dates") commencing on February 28, 2009; provided that if any such Payment Date is not a New York Business Day and London Business Day, dividends (if declared) on the Preferred Stock, Series 1, will be paid on the immediately succeeding New York Business Day and London Business Day, without interest, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 1, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). "London Business Day" means a day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced

on November 28, 2008) and shall end on and include the calendar day next preceding the first day of the next Dividend Period. The dividend rate on the shares of Preferred Stock, Series 1 for each Dividend Period shall be a floating rate per annum equal to three-month U.S. dollar LIBOR plus 0.75%, but in no event will the rate be less than 3.00% per annum, of the \$30,000 liquidation preference per share of Preferred Stock, Series 1.

LIBOR, with respect to a Dividend Period, means the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three month period that normally appears on Moneyline Telerate Page 3750, as displayed on page "BBAM" (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Moneyline Telerate, Inc. on page BBAM or any other page that may replace page BBAM on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank offered rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) The amount of dividends payable for each full Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 1, shall (if and when declared, as herein provided) be computed by dividing the dividend rate by four, rounded to the nearest one-hundredth of a percent, with five one-thousandths rounded upwards, and applying the resulting rate to the amount of \$30,000 per share. The amount of dividends payable for any period shorter than a full Dividend Period on the Preferred Stock, Series 1, shall (if and when declared, as herein provided) be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. The amount of dividends payable on the Preferred Stock, Series 1, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 1 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 1 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 1 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 1, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 1, all dividends declared upon shares of the Preferred Stock, Series 1, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared pro rata so that the amount of dividends declared per share on the Preferred Stock, Series 1, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 1 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 1 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 1 unless full dividends on all outstanding shares of Preferred Stock, Series 1 has been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 1 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 1 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 1 in the event that dividends have not been declared or paid on the Preferred Stock, Series 1 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 1 is not paid for any Dividend Period, the holders of Preferred Stock, Series 1 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 1 as to dividends and dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 1 if at the same time any arrears exists in the payment of

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dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 1.

(f) Holders of shares of the Preferred Stock, Series 1, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 1. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 1, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 1, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 1, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 1, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 1, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 1, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 1, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation for purposes of this Section (3).

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 1, as provided in this Section (3), the holders of Preferred Stock, Series 1 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 1, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 1, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 1, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 1, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 1, may not be redeemed prior to November 28, 2009. On and after November 28, 2009, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 1, as a whole at any time or in part from time to



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time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 1 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 1 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 1, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 1, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 1, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders of such shares of Preferred Stock, Series 1, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 1, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 1, not previously called for redemption by lot or pro rata or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 1 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 1 will have no right to require redemption of any shares of Preferred Stock, Series 1.

(5) Terms Dependent on Regulatory Changes. If, (a) after the date of the issuance of the Preferred Stock, Series 1, the Corporation (by election or otherwise) becomes subject to any law, rule, regulation or guidance (together, "Regulations") relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as "Tier 1" in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such "Tier 1" capital (such capital described in either (x) or (y) is referred to below as "Tier 1 Capital"), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 1 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 1 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 1 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 1 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation's right to redeem the Preferred Stock, Series 1 on and after November 28, 2009 pursuant to Section 4 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation's right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 1 (upon a non-payment of dividends on the Preferred Stock, Series 1) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 1; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 1, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 1 so as to affect the shares of the Preferred Stock, Series 1 adversely.

As used above, the term "Required Unrestricted Tier 1 Provision" means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 1 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 1 in Tier 1 Capital (other than any limitation requiring that common

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equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 1 of any such changes in the terms of the Preferred Stock, Series 1 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

(6) Voting Rights. The Preferred Stock, Series 1, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 1, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a "Nonpayment"), the holders of outstanding shares of the Preferred Stock, Series 1, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 1, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders. At elections for such directors, each holder of the Preferred Stock, Series 1, shall be entitled to three votes for each share of Preferred Stock, Series 1 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 1, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 1, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 1, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 1, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders

voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 1, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 1, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 1, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 1, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 1, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 1, or of the holders thereof;

provided, however, that any increase in the amount of issued Preferred Stock, Series 1 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 1, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 1, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 1, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 1:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 1 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 1 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 1.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 1 (including, without limitation, the fixing of a record date in connection

therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 1 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 1, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 1, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 1, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 1, if the holders of such class of stock and the Preferred Stock, Series 1, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 1, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 1, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 2," "6.375% Non-Cumulative Preferred Stock, Series 3," "Floating Rate Non-Cumulative Preferred Stock, Series 4," "Floating Rate Non-Cumulative Preferred Stock, Series 5," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "8.625% Non-Cumulative Preferred Stock, Series 8," "Cumulative Redeemable Preferred Stock, Series B," "Floating Rate Non-Cumulative Preferred Stock, Series E," "6.204% Non-Cumulative Preferred Stock, Series D," "Floating Rate Non-Cumulative Preferred Stock, Series F," "Adjustable Rate Non-Cumulative Preferred Stock, Series G," "8.20% Non-Cumulative Preferred Stock, Series H," "6.625% Non-Cumulative Preferred Stock, Series I," "7.25% Non-Cumulative Preferred Stock, Series J," "7.25% Non-Cumulative Perpetual Convertible Preferred Stock,

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Series L,” “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K,” and “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M,” and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 1, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 1, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 1, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

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IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31<sup>st</sup> day of December, 2008.

**BANK OF AMERICA CORPORATION**

By: /s/ Teresa M. Brenner

Name: Teresa M. Brenner

Title: Associate General Counsel

*[Signature Page to Certificate of Designations, Series I]*

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**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS**

**Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware**

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 2  
(Par Value \$0.01 Per Share)**



Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 2**

(1) Number of Shares and Designation. 37,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as Floating Rate Non-Cumulative Preferred Stock, Series 2 (hereinafter called the "Preferred Stock, Series 2").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 2, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, in arrears, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 28, May 28, August 28 and November 28 (the "Payment Dates"); provided that if any such Payment Date is not a New York Business Day and London Business Day, the Payment Date will be the next succeeding day that is a New York Business Day and London Business Day, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. The dividend, if declared, for the initial Dividend Period (as defined below) shall be paid on February 28, 2009. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 2, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 days nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). "London Business Day" means a day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced

on November 28, 2008) and shall end on and exclude the next succeeding Payment Date. The dividend rate on the shares of Preferred Stock, Series 2, for each Dividend Period shall be a floating rate *per annum* equal to three-month U.S. dollar LIBOR plus 0.65%, but in no event will the rate be less than 3.00% per annum, of the \$30,000 liquidation preference per share of Preferred Stock, Series 2.

The “three-month U.S. dollar LIBOR”, with respect to a Dividend Period, means the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three month period that normally appears on Moneyline Telerate Page 3750, as displayed on page “BBAM” (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Moneyline Telerate, Inc. on page BBAM or any other page that may replace page BBAM on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank offered rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If three-month U.S. dollar LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, three-month U.S. dollar LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine three-month U.S. dollar LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, three-month U.S. dollar LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) Dividends on the Preferred Stock, Series 2, shall (if and when declared, as herein provided) be computed on the basis of a 360-day year and the actual number of days elapsed in each Dividend Period. Accordingly, the amount of dividends payable per share for each Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 2 shall (if and when declared, as herein provided) equal the product of (i) the applicable dividend rate, (ii) \$30,000 and (iii) a fraction (A) the numerator of which will be the actual number of days elapsed in such Dividend Period, and (B) the denominator of which will be 360. The amount of dividends payable on the Preferred Stock, Series 2, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 2 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 2 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 2 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 2, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 2, all dividends declared upon shares of the Preferred Stock, Series 2, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared *pro rata* so that the amount of dividends declared per share on the Preferred Stock, Series 2, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 2 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 2 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 2 unless full dividends on all outstanding shares of Preferred Stock, Series 2 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 2 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 2 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 2 in the event that dividends have not been declared or paid on the Preferred Stock, Series 2 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 2 is not paid for any Dividend Period, the holders of Preferred Stock, Series 2 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 2 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 2 if at the same time any arrears exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 2.

(f) Holders of shares of the Preferred Stock, Series 2, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 2. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 2, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 2, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 2, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 2, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 2, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 2, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 2, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation for purposes of this Section (3).

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 2, as provided in this Section (3), the holders of Preferred Stock, Series 2 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 2, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 2, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 2, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 2, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 2, may not be redeemed prior to November 28, 2009. On and after November 28, 2009, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 2, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 2 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 2 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 2, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 2, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 2, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders of such shares of Preferred Stock, Series 2, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 2, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 2, not previously called for redemption by lot or *pro rata* or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 2 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 2 will have no right to require redemption of any shares of Preferred Stock, Series 2.

(5) Terms Dependent on Regulatory Changes. If, (a) the Corporation (by election or otherwise) is subject to any law, rule, regulation or guidance (together, “Regulations”) relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as “Tier 1” in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such “Tier 1” capital (such capital described in either (x) or (y) is referred to below as “Tier 1 Capital”), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 2 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 2 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 2 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 2 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation’s right to redeem the Preferred Stock, Series 2 on and after November 28, 2009 pursuant to Section 4 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation’s right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 2 (upon a non-payment of dividends on the Preferred Stock, Series 2) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 2; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 2, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 2 so as to affect the shares of the Preferred Stock, Series 2 adversely.

As used above, the term “Required Unrestricted Tier 1 Provision” means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation,

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required for the Preferred Stock, Series 2 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 2 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 2 of any such changes in the terms of the Preferred Stock, Series 2 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

(6) Voting Rights. The Preferred Stock, Series 2, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 2, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a "Nonpayment"), the holders of outstanding shares of the Preferred Stock, Series 2, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 2, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders on the terms set forth below. At elections for such directors, each holder of the Preferred Stock, Series 2, shall be entitled to three votes for each share of Preferred Stock, Series 2 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them).

Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 2, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 2, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 2, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 2, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 2, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 2, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 2, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 2, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 2, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 2, or of the holders thereof;

provided, however, that any increase in the amount of issued Preferred Stock, Series 2 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 2, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 2, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 2, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 2:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 2 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising



with respect to the Preferred Stock, Series 2 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 2.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 2 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 2 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 2, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 2, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 2, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 2, if the holders of such class of stock and the Preferred Stock, Series 2, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 2, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 2, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 1," "6.375% Non-Cumulative Preferred Stock, Series 3," "Floating Rate Non-Cumulative Preferred Stock, Series 4," "Floating Rate Non-Cumulative Preferred Stock, Series 5," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "8.625% Non-Cumulative Preferred Stock, Series 8," "Cumulative Redeemable Preferred Stock, Series B,"

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“Floating Rate Non-Cumulative Preferred Stock, Series E,” “6.204% Non-Cumulative Preferred Stock, Series D” “Floating Rate Non-Cumulative Preferred Stock, Series F,” “Adjustable Rate Non-Cumulative Preferred Stock, Series G,” “8.20% Non-Cumulative Preferred Stock, Series H,” “6.625% Non-Cumulative Preferred Stock, Series I,” “7.25% Non-Cumulative Preferred Stock, Series J,” “7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L,” “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K,” and “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M,” and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 2, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 2, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 2, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

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IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31<sup>st</sup> day of December, 2008.

**BANK OF AMERICA CORPORATION**

By: /s/ Teresa M. Brenner

Name: Teresa M. Brenner

Title: Associate General Counsel

*[Signature Page to Certificate of Designations, Series 2]*

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**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS**

**Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware**

**6.375% NON-CUMULATIVE PREFERRED STOCK, SERIES 3  
(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as required by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**6.375% NON-CUMULATIVE PREFERRED STOCK, SERIES 3**

(1) Number of Shares and Designation. 27,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as 6.375% Non-Cumulative Preferred Stock, Series 3 (hereinafter called the "Preferred Stock, Series 3").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 3, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, in arrears, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 28, May 28, August 28 and November 28 (the "Payment Dates") commencing on February 28, 2009; provided that if any such Payment Date is not a New York Business Day, the Payment Date will be the next succeeding day that is a New York Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 3, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 days nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on November 28, 2008) and shall end on and exclude the next succeeding Payment Date. The dividend rate on the shares of Preferred Stock, Series 3, for each Dividend Period shall be 6.375% per annum, of the \$30,000 liquidation preference per share of Preferred Stock, Series 3.

(ii) The amount of dividends payable for each full Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 3, shall be computed by dividing the dividend rate of 6.375% per annum by four and applying the resulting rate to the amount of \$30,000 per share. The amount of dividends payable for any period shorter than a full Dividend Period on the Preferred Stock, Series 3, shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. The amount of dividends payable on the Preferred Stock, Series 3, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 3 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 3 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 3 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 3, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 3, all dividends declared upon shares of the Preferred Stock, Series 3, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared pro rata so that the amount of dividends declared per share on the Preferred Stock, Series 3, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 3 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 3 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 3 unless full dividends on all outstanding shares of Preferred Stock, Series 3 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 3 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 3 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not

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in any way create any claim or right in favor of the holders of Preferred Stock, Series 3 in the event that dividends have not been declared or paid on the Preferred Stock, Series 3 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 3 is not paid for any Dividend Period, the holders of Preferred Stock, Series 3 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 3 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 3 if at the same time any arrearage exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 3.

(f) Holders of shares of the Preferred Stock, Series 3, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 3. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 3, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 3, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 3, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 3, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 3, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 3, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 3, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation for purposes of this Section (3).

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 3, as provided in this Section (3), the holders of Preferred Stock, Series 3 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity

with or prior to the Preferred Stock, Series 3, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 3, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 3, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 3, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 3, may not be redeemed prior to November 28, 2010. On and after November 28, 2010, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 3, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 3 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 3 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 3, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 3, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 3, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders of such shares of Preferred Stock, Series 3, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares



of Preferred Stock, Series 3, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 3, not previously called for redemption by lot or pro rata or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 3 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 3 will have no right to require redemption of any shares of Preferred Stock, Series 3.

(5) Terms Dependent on Regulatory Changes. If, (a) the Corporation (by election or otherwise) is subject to any law, rule, regulation or guidance (together, "Regulations") relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as "Tier 1" in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such "Tier 1" capital (such capital described in either (x) or (y) is referred to below as "Tier 1 Capital"), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 3 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 3 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 3 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 3 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation's right to redeem the Preferred Stock, Series 3 on and after November 28, 2010 pursuant to Section 3 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation's right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 3 (upon a non-payment of dividends on the Preferred Stock, Series 3) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 3; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 3, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 3 so as to affect the shares of the Preferred Stock, Series 3 adversely.

As used above, the term “Required Unrestricted Tier 1 Provision” means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 3 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 3 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 3 of any such changes in the terms of the Preferred Stock, Series 3 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

For the avoidance of doubt, “amend”, “modify”, “change” and words of similar effect used in this Section (5) mean that the Preferred Stock, Series 3 shall have such additional or different rights, powers and preferences, and such qualifications, limitations and restrictions as may be established by the Board of Directors (or a duly authorized committee thereof) pursuant to this Section (5), subject to the limitations set forth herein.

(6) Voting Rights. The Preferred Stock, Series 3, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 3, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a “Nonpayment”), the holders of outstanding shares of the Preferred Stock, Series 3, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 3, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders on the terms set forth below. At elections for such directors, each holder of the Preferred Stock, Series 3, shall be entitled to three votes for each share of Preferred Stock, Series 3 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of

stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 3, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 3, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 3, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 3, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 3, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 3, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 3, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 3, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 3, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 3, or of the holders thereof;

provided, however, that any increase in the amount of issued Preferred Stock, Series 3 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the

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Preferred Stock, Series 3, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 3, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 3, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 3:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 3 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 3 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 3.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 3 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 3 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 3, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 3, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 3, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 3, if the holders of such class of stock and the Preferred Stock, Series 3, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 3, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 3, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 1," "Floating Rate Non-Cumulative Preferred Stock, Series 2," "Floating Rate Non-Cumulative Preferred Stock, Series 4," "Floating Rate Non-Cumulative Preferred Stock, Series 5," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "8.625% Non-Cumulative Preferred Stock, Series 8," "Cumulative Redeemable Preferred Stock, Series B," "Floating Rate Non-Cumulative Preferred Stock, Series E," "6.204% Non-Cumulative Preferred Stock, Series D" "Floating Rate Non-Cumulative Preferred Stock, Series F," "Adjustable Rate Non-Cumulative Preferred Stock, Series G," "8.20% Non-Cumulative Preferred Stock, Series H," "6.625% Non-Cumulative Preferred Stock, Series I," "7.25% Non-Cumulative Preferred Stock, Series J," "7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L," "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K," and "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M," and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 3, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 3, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 3, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed."

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IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31<sup>st</sup> day of December, 2008.

**BANK OF AMERICA CORPORATION**

By: /s/ Teresa M. Brenner

Name: Teresa M. Brenner

Title: Associate General Counsel

*[Signature Page to Certificate of Designations, Series 3]*

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**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS**

**Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware**

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 4  
(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

#### FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 4

(1) Number of Shares and Designation. 20,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as Floating Rate Non-Cumulative Preferred Stock, Series 4 (hereinafter called the "Preferred Stock, Series 4").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 4, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, in arrears, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 28, May 28, August 28 and November 28 (the "Payment Dates") commencing on February 28, 2009; provided that if any such Payment Date is not a New York Business Day and London Business Day, the Payment Date will be the next succeeding day that is a New York Business Day and London Business Day, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 4, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 days nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). "London Business Day" means a day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on November 28, 2008) and shall end on and exclude the next succeeding Payment Date. The



dividend rate on the shares of Preferred Stock, Series 4, for each Dividend Period shall be a floating rate *per annum* equal to three-month U.S. dollar LIBOR plus 0.75%, but in no event will the rate be less than 4.00% *per annum*, of the \$30,000 liquidation preference per share of Preferred Stock, Series 4.

The “three-month U.S. dollar LIBOR”, with respect to a Dividend Period, means the rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three month period that normally appears on Moneyline Telerate Page 3750, as displayed on page “BBAM” (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Moneyline Telerate, Inc. on page BBAM or any other page that may replace page BBAM on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank offered rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If three-month U.S. dollar LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, three-month U.S. dollar LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine three-month U.S. dollar LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, three-month U.S. dollar LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) Dividends on the Preferred Stock, Series 4, shall (if and when declared, as herein provided) be computed on the basis of a 360-day year and the actual number of days elapsed in each Dividend Period. Accordingly, the amount of dividends payable per share for each Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 4 shall (if and when declared, as herein provided) equal the product of (i) the applicable dividend rate, (ii) \$30,000 and (iii) a fraction (A) the numerator of which will be the actual number of days elapsed in such Dividend Period, and (B) the denominator of which will be 360. The amount of dividends payable on the Preferred Stock, Series 4, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

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(c) So long as any shares of the Preferred Stock, Series 4 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 4 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 4 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 4, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 4, all dividends declared upon shares of the Preferred Stock, Series 4, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared *pro rata* so that the amount of dividends declared per share on the Preferred Stock, Series 4, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 4 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 4 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 4 unless full dividends on all outstanding shares of Preferred Stock, Series 4 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 4 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 4 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 4 in the event that dividends have not been declared or paid on the Preferred Stock, Series 4 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 4 is not paid for any Dividend Period, the holders of Preferred Stock, Series 4 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 4 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 4 if at the same time any arrears exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 4.

(f) Holders of shares of the Preferred Stock, Series 4, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 4. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 4, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 4, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 4, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 4, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 4, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 4, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 4, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation for purposes of this Section (3).

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 4, as provided in this Section (3), the holders of Preferred Stock, Series 4 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 4, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 4, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 4, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 4, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 4, may not be redeemed prior to November 28, 2010. On and after November 28, 2010, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 4, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 4 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 4 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 4, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 4, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 4, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders of such shares of Preferred Stock, Series 4, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 4, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 4, not previously called for redemption by lot or *pro rata* or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 4 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 4 will have no right to require redemption of any shares of Preferred Stock, Series 4.

(5) Terms Dependent on Regulatory Changes. If, (a) the Corporation (by election or otherwise) is subject to any law, rule, regulation or guidance (together, “Regulations”) relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as “Tier 1” in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such “Tier 1” capital (such capital described in either (x) or (y) is referred to below as “Tier 1 Capital”), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 4 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 4 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 4 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 4 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation’s right to redeem the Preferred Stock, Series 4 on and after November 28, 2010 pursuant to Section 4 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation’s right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 4 (upon a non-payment of dividends on the Preferred Stock, Series 4) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 4; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 4, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 4 so as to affect the shares of the Preferred Stock, Series 4 adversely.

As used above, the term "Required Unrestricted Tier 1 Provision" means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 4 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 4 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 4 of any such changes in the terms of the Preferred Stock, Series 4 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

For the avoidance of doubt, "amend", "modify", "change" and words of similar effect used in this Section (5) mean that the Preferred Stock, Series 4 shall have such additional or different rights, powers and preferences, and such qualifications, limitations and restrictions as may be established by the Board of directors (or a duly authorized committee thereof) pursuant to this Section (5), subject to the limitations set forth herein.

(6) Voting Rights. The Preferred Stock, Series 4, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 4, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a "Nonpayment"), the holders of outstanding shares of the Preferred Stock, Series 4, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 4, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders on the terms set forth below. At elections for such directors, each holder of the Preferred Stock, Series 4, shall be entitled to three votes for each share of Preferred Stock, Series 4 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 4, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 4, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock,

Series 4, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 4, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 4, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 4, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 4, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 4, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 4, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 4, or of the holders thereof; provided, however, that any increase in the amount of issued Preferred Stock, Series 4 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 4, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 4, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 4, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 4:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 4 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 4 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 4.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 4 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 4 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 4, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 4, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 4, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 4, if the holders of such class of stock and the Preferred Stock, Series 4, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 4, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 4, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 1" and "Floating Rate Non-Cumulative



Preferred Stock, Series 2” and the Shares of Preferred Stock of the Corporation designated “6.375% Non-Cumulative Preferred Stock, Series 3,” “Floating Rate Non-Cumulative Preferred Stock, Series 5,” “6.70% Non-Cumulative Perpetual Preferred Stock, Series 6,” “6.25% Non-Cumulative Perpetual Preferred Stock, Series 7,” “8.625% Non-Cumulative Preferred Stock, Series 8,” “Cumulative Redeemable Preferred Stock, Series B,” “Floating Rate Non-Cumulative Preferred Stock, Series E,” “6.204% Non-Cumulative Preferred Stock, Series D” “Floating Rate Non-Cumulative Preferred Stock, Series F,” “Adjustable Rate Non-Cumulative Preferred Stock, Series G,” “8.20% Non-Cumulative Preferred Stock, Series H,” “6.625% Non-Cumulative Preferred Stock, Series I,” “7.25% Non-Cumulative Preferred Stock, Series J,” “7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L,” “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K,” and “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M,” and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 4, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 4, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 4, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

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IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31<sup>st</sup> day of December, 2008.

**BANK OF AMERICA CORPORATION**

By: /s/ Teresa M. Brenner

Name: Teresa M. Brenner

Title: Associate General Counsel

*[Signature Page to Certificate of Designations, Series 4]*

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**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS**  
**Pursuant to Section 151 of the**  
**General Corporation Law of the State of Delaware**

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 5**  
**(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 5**

(1) Number of Shares and Designation. 50,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as Floating Rate Non-Cumulative Preferred Stock, Series 5 (hereinafter called the "Preferred Stock, Series 5").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 5, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, in arrears, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 21, May 21, August 21 and November 21 (the "Payment Dates") commencing on February 21, 2009; provided that if any such Payment Date is not a New York Business Day and London Business Day, the Payment Date will be the next succeeding day that is a New York Business Day and London Business Day, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 5, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 days nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). "London Business Day" means any day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on November 21, 2008) and shall end on and exclude the next succeeding Payment Date. The

dividend rate on the shares of Preferred Stock, Series 5 for each Dividend Period shall be a floating rate per annum equal to three-month U.S. dollar LIBOR plus .50%, but in no event will the rate be less than 4.00% per annum, of the \$30,000 liquidation preference per share of Preferred Stock, Series 5.

The “three-month U.S. dollar LIBOR”, with respect to a Dividend Period, means the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three month period that normally appears on Telerate Page 3750, as displayed on page “BBAM” (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Telerate, Inc. on page BBAM or any other page that may replace page BBAM on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank offered rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If three-month U.S. dollar LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, three-month U.S. dollar LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine three-month U.S. dollar LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, three-month U.S. dollar LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) Dividends on the Preferred Stock, Series 5, shall (if and when declared, as herein provided) be computed on the basis of a 360-day year and the actual number of days elapsed in each Dividend Period. Accordingly, the amount of dividends payable per share for each Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 5 shall (if and when declared, as herein provided) equal the product of (i) the applicable dividend rate, (ii) \$30,000 and (iii) a fraction (A) the numerator of which will be the actual number of days elapsed in such Dividend Period, and (B) the denominator of which will be 360. The amount of dividends payable on the Preferred Stock, Series 5, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

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(c) So long as any shares of the Preferred Stock, Series 5 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 5 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 5 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 5, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 5, all dividends declared upon shares of the Preferred Stock, Series 5, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared pro rata so that the amount of dividends declared per share on the Preferred Stock, Series 5, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 5 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 5 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 5 unless full dividends on all outstanding shares of Preferred Stock, Series 5 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 5 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 5 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 5 in the event that dividends have not been declared or paid on the Preferred Stock, Series 5 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 5 is not paid for any Dividend Period, the holders of Preferred Stock, Series 5 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 5 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

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(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 5 if at the same time any arrears exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 5.

(f) Holders of shares of the Preferred Stock, Series 5, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 5. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 5, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 5, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 5, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 5, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 5, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 5, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 5, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 5, as provided in this Section (3), the holders of Preferred Stock, Series 5 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 5, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 5, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 5, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 5, shall not be entitled to share therein.

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(4) Redemption. (a) The Preferred Stock, Series 5, may not be redeemed prior to May 21, 2012. On and after May 21, 2012, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 5, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 5 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 5 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 5, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 5, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 5, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders of such shares of Preferred Stock, Series 5, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 5, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 5, not previously called for redemption by lot or *pro rata* or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.



The Preferred Stock, Series 5 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 5 will have no right to require redemption of any shares of Preferred Stock, Series 5.

(5) Terms Dependent on Regulatory Changes. If, (a) the Corporation (by election or otherwise) is subject to any law, rule, regulation or guidance (together, “Regulations”) relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as “Tier 1” in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such “Tier 1” capital (such capital described in either (x) or (y) is referred to below as “Tier 1 Capital”), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 5 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 5 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 5 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 5 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation’s right to redeem the Preferred Stock, Series 5 on and after May 21, 2012 pursuant to Section 5 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation’s right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 5 (upon a non-payment of dividends on the Preferred Stock, Series 5) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 5; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 5, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 5 so as to affect the shares of the Preferred Stock, Series 5 adversely.

As used above, the term “Required Unrestricted Tier 1 Provision” means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the

Corporation, required for the Preferred Stock, Series 5 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 5 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 5 of any such changes in the terms of the Preferred Stock, Series 5 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

For the avoidance of doubt, “amend”, “modify”, “change” and words of similar effect used in this Section (5) mean that the Preferred Stock, Series 5 shall have such additional or different rights, powers and preferences, and such qualifications, limitations and restrictions as may be established by the Board of Directors (or a duly authorized committee thereof) pursuant to this Section (5), subject to the limitations set forth herein.

(6) Voting Rights. The Preferred Stock, Series 5, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 5, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a “Nonpayment”), the holders of outstanding shares of the Preferred Stock, Series 5, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 5, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders on the terms set forth below. At elections for such directors, each holder of the Preferred Stock, Series 5, shall be entitled to three votes for each share of Preferred Stock, Series 5 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 5, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 5, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 5, shall have been paid in full for at least four Dividend

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Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 5, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 5, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 5, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 5, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 5, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 5, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 5, or of the holders thereof; provided, however, that any increase in the amount of issued Preferred Stock, Series 5 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 5, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 5, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 5, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 5:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 5 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 5 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 5.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 5 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 5 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 5, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 5, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 5, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 5, if the holders of such class of stock and the Preferred Stock, Series 5, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 5, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 5, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 1," "Floating Rate Non-Cumulative

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Preferred Stock, Series 2,” “6.375% Non-Cumulative Preferred Stock, Series 3,” “Floating Rate Non-Cumulative Preferred Stock, Series 4,” “6.70% Non-Cumulative Perpetual Preferred Stock, Series 6,” “6.25% Non-Cumulative Perpetual Preferred Stock, Series 7,” “8.625% Non-Cumulative Preferred Stock, Series 8,” “Cumulative Redeemable Preferred Stock, Series B,” “Floating Rate Non-Cumulative Preferred Stock, Series E,” “6.204% Non-Cumulative Preferred Stock, Series D” “Floating Rate Non-Cumulative Preferred Stock, Series F,” “Adjustable Rate Non-Cumulative Preferred Stock, Series G,” “8.20% Non-Cumulative Preferred Stock, Series H,” “6.625% Non-Cumulative Preferred Stock, Series I,” “7.25% Non-Cumulative Preferred Stock, Series J,” “7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L,” “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K,” and “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M,” and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 5, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 5, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 5, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

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IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31<sup>st</sup> day of December, 2008.

**BANK OF AMERICA CORPORATION**

By: /s/ Teresa M. Brenner

Name: Teresa M. Brenner

Title: Associate General Counsel

*[Signature Page to Certificate of Designations, Series 5]*

**CERTIFICATE OF DESIGNATION**  
**6.70% NONCUMULATIVE PERPETUAL PREFERRED STOCK, SERIES 6**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of preferred stock of the Corporation's previously authorized preferred stock, par value \$0.01 per share, such series to be designated 6.70% Noncumulative Perpetual Preferred Stock, Series 6, to consist of 65,000 shares (the "Series 6 Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

Section 1. Liquidation Value. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Series 6 Preferred Stock at the time outstanding will be entitled to receive out of the assets of the Corporation available for distribution to stockholders, before any distribution of assets is made to holders of Common Stock or any other class of stock ranking junior to the Series 6 Preferred Stock in the distribution of assets upon any liquidation, dissolution or winding up of the affairs of the Corporation, liquidating distributions in the amount of \$1,000 per share, plus any dividends declared thereon and not yet paid prior to the date of liquidation.

After payment of the full amount of the liquidating distributions to which they are entitled pursuant to the preceding paragraph, the holders of Series 6 Preferred Stock will have no right or claim to any of the remaining assets of the Corporation. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the full amount of the liquidating distributions on all outstanding Series 6 Preferred Stock and the corresponding amounts payable on all shares of other classes or series of capital stock of the Corporation ranking on a parity with the Series 6 Preferred Stock in the distribution of assets upon any liquidation, dissolution or winding up of the affairs of the Corporation, then the holders of the Series 6 Preferred Stock and such other classes or series of capital stock ranking on a parity with the Series 6 Preferred Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they otherwise respectively would be entitled.

For the purposes of this Section 1, the consolidation or merger of the Corporation with or into any other entity, or the sale, lease or conveyance of all or substantially all of the property or business of the Corporation, shall not be deemed to constitute the liquidation, dissolution or winding up of the Corporation.

Section 2. Dividends.

(a) Payment of Dividends. Holders of Series 6 Preferred Stock shall be entitled to receive, if, when and as authorized and declared by the Board of Directors, out of assets of the Corporation legally available therefor, cash dividends at an annual rate of 6.70% of the \$1,000 liquidation preference per share (equivalent to \$67.00 per share per annum), and no more. Such noncumulative cash dividends shall be payable, if authorized and declared, quarterly on March 30, June 30, September 30 and December 30 of each year, or, if any such day is not a Business Day (as defined herein), on the preceding Business Day (each such date, "Dividend Payment Date"). Each authorized and declared dividend shall be payable to holders of record of the Series 6 Preferred Stock as they appear on the stock books of the Corporation at the close of business on such record date, not more than 45 calendar days nor less than 10 calendar days preceding the Dividend Payment Date therefor, as may be determined by the Board of Directors (each such date, a "Record Date"); provided, however, that if the date fixed for redemption of any of the Series 6 Preferred Stock occurs after a dividend is authorized and declared but before it is paid, such dividend shall be paid as part of the redemption price to the person to whom the redemption price is paid. Quarterly dividend periods (each, a "Dividend Period") shall commence on and include the first day of each Dividend Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on December 30, 2008), and shall end on and include the last day, of the quarterly period in which the corresponding Dividend Payment Date occurs.

The amount of dividends payable for any Dividend Period which, as to any share of Series 6 Preferred Stock (determined by reference to the issuance date and the redemption or retirement date thereof), is greater or less than a full Dividend Period shall be computed on the basis of the number of days elapsed in the period using a 360-day year composed of twelve 30-day months.

Holders of the Series 6 Preferred Stock shall not be entitled to any interest, or any sum of money in lieu of interest, in respect of any dividend payment or payments on the Series 6 Preferred Stock authorized and declared by the Board of Directors that may be unpaid.

(b) Dividends Noncumulative. The right of holders of Series 6 Preferred Stock to receive dividends is noncumulative. Accordingly, if the Board of Directors does not authorize or declare a dividend payable in respect of any Dividend Period, holders of Series 6 Preferred Stock shall have no right to receive a dividend in respect of such Dividend Period and the Corporation shall have no obligation to pay a dividend in respect of such Dividend Period, whether or not dividends are authorized and declared payable in respect of any prior or subsequent Dividend Period.

(c) Priority as to Dividends; Limitations on Dividends on Junior Equity. If full dividends on the Series 6 Preferred Stock for a completed Dividend Period shall not have been declared and paid, or declared and a sum sufficient for the payment thereof shall not have been set apart for such payments, no dividends or distributions shall be authorized, declared or paid or set aside for payment (other than as provided in the second paragraph of this Section 2(c)) during the next subsequent Dividend Period with respect to the Common Stock or any other stock of the Corporation ranking junior to the Series 6 Preferred Stock as to dividends or amounts upon



liquidation, dissolution or winding up of the affairs of the Corporation (together with the Common Stock, "Junior Equity") or any stock on parity with the Series 6 Preferred Stock as to dividends or amounts upon liquidation, dissolution or winding up of the affairs of the Corporation ("Parity Stock"), nor shall any Junior Equity or Parity Stock be redeemed, purchased or otherwise acquired for any consideration (or any monies to be paid to or made available for a sinking fund for the redemption of any such stock) by the Corporation (except by conversion into or exchange for other Junior Equity), until such time as dividends on all outstanding Series 6 Preferred Stock for at least four consecutive Dividend Periods have been paid in full.

When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) for any Dividend Period on the Series 6 Preferred Stock, all dividends declared on the Series 6 Preferred Stock and any other series ranking on a parity as to dividends with the Series 6 Preferred Stock shall be declared *pro rata* so that the amount of dividends declared per share on the Series 6 Preferred Stock and each such other series of capital stock shall in all cases bear to each other the same ratio that full dividends, for such Dividend Period, per share of Series 6 Preferred Stock (which shall not include any accumulation in respect of unpaid dividends for prior Dividend Periods) and full dividends, including required or permitted accumulations, if any, on the stock of each other series ranking on a parity as to dividends with the Series 6 Preferred Stock bear to each other.

(d) So long as any shares of Series 6 Preferred Stock are outstanding, the Corporation shall not authorize or issue any class or series of stock with a preference as to payment of distributions or amounts upon liquidation, dissolution or winding up that is senior in right to the preferences of the Series 6 Preferred Stock as to payment of distributions or amounts upon liquidation, dissolution or winding up.

(e) Any reference to "dividends" or "distributions" in this Section 2 shall not be deemed to include any distribution made in connection with any voluntary or involuntary dissolution, liquidation or winding up of the Corporation.

Section 3. Optional Redemption. The Series 6 Preferred Stock will not be redeemable prior to February 3, 2009. On or after February 3, 2009, the Series 6 Preferred Stock will be redeemable at the option of the Corporation, in whole or in part, at any time or from time to time, at a cash redemption price equal to the sum of the liquidation preference thereof plus the amount of the declared and unpaid dividends thereon from the beginning of the Dividend Period in which the redemption occurs to the date of redemption.

In the event that fewer than all the outstanding shares of Series 6 Preferred Stock are to be redeemed, the number of shares of Series 6 Preferred Stock to be redeemed shall be determined by the Board of Directors, and the shares to be redeemed shall be determined by lot or *pro rata* as may be determined by the Board of Directors or by any other method as may be determined by the Board of Directors in its sole discretion to be equitable, provided that such method satisfies any applicable requirements of any securities exchange (if any) on which the shares of Series 6 Preferred Stock are then listed.

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Unless full dividends on the Series 6 Preferred Stock in respect of the most recently completed Dividend Period have been or contemporaneously are declared and paid or full dividends have been declared and a sum sufficient for the payment thereof has been set apart for payment in respect of the most recently completed Dividend Period, no Series 6 Preferred Stock shall be redeemed unless all outstanding shares of Series 6 Preferred Stock are redeemed and the Corporation shall not purchase or otherwise acquire any Series 6 Preferred Stock; provided, however, that the Corporation may purchase or acquire Series 6 Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series 6 Preferred Stock.

The Corporation will give notice of redemption of the Series 6 Preferred Stock by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days' prior to the redemption date. A failure to give such notice or any defect in the notice or in the Corporation's mailing will not affect the validity of the proceedings for the given redemption of any Series 6 Preferred Stock except as to the holder to whom notice was defective or not given. Each notice shall state: (i) the redemption date; (ii) the redemption price and (iii) the number of shares of Series 6 Preferred Stock to be redeemed.

A notice by the Corporation pursuant to this Section 3 shall be sufficiently given if in writing and mailed, first class postage prepaid, to each record holder of Series 6 Preferred Stock at the holder's address as it appears in the records of the Corporation's transfer agent. In any case where notice is given by mail, neither the failure to mail such notice nor any defect in the notice to any particular holder shall affect the sufficiency of such notice, to any other holder. Any notice mailed to a holder in the manner described above shall be deemed given on the date mailed, whether or not the holder actually receives the notice. A notice of redemption shall be given not less than 30 days and not more than 60 days prior to the date of redemption specified in the notice, and shall specify (i) the redemption date, (ii) the number of Series 6 Preferred Stock to be redeemed, (iii) the redemption price and (iv) the manner in which holders of Series 6 Preferred Stock called for redemption may obtain payment of the redemption price in respect of those shares.

Any shares of Series 6 Preferred Stock that are duly called for redemption pursuant to this Section 3 shall no longer be deemed to be outstanding for any purpose from and after that time that the Corporation shall have irrevocably deposited with the paying agent identified in the notice of redemption funds in an amount equal to the aggregate redemption price. From and after that time, the holders of the Series 6 Preferred Stock so called for redemption shall have no further rights as stockholders of the Corporation and in lieu thereof shall have only the right to receive the redemption price, without interest.

Series 6 Preferred Stock redeemed pursuant to this Section 3 or purchased or otherwise acquired for value by the Corporation shall, after such acquisition, have the status of authorized and unissued shares of Preferred Stock and may be reissued by the Corporation at any time as shares of any series of Preferred Stock other than as Series 6 Preferred Stock.

Section 4. Voting Rights.

(a) General. Except as expressly provided in this Section 4 and as required by law, holders of Series 6 Preferred Stock shall have no voting rights.

The holders of the Series 6 Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Series 6 Preferred Stock shall be entitled to 5 votes.

When the holders of Series 6 Preferred Stock are entitled to vote as a separate series, each Series 6 Preferred Stock will be entitled to 40 votes and may designate up to 40 proxies, with each such proxy having the right to vote a whole number of votes, totaling 40 votes per share of Series 6 Preferred Stock.

When the holders of Series 6 Preferred Stock are entitled to vote together as a class with all other series of Preferred Stock pursuant to subsection (b) of this Section 4 hereof, each share of Series 6 Preferred stock will be entitled to one vote.

(b) Right to Elect Directors. If, at the time of any annual meeting of the Corporation's stockholders for the election of directors, the Corporation has failed to pay or declare and set aside for payment all scheduled dividends during any six Dividend Periods (whether or not consecutive) on the Series 6 Preferred Stock, the number of directors then constituting the Board of Directors of the Corporation will be increased by two (if not already increased by two due to failure to pay or declare and set aside dividends on any series of Preferred Stock), and the holders of the Series 6 Preferred Stock, voting separately as a class with all other series of Preferred Stock then entitled by the terms of such Preferred Stock to vote for additional directors, will be entitled to elect such two additional directors to serve on the Corporation's Board of Directors at each such annual meeting. Each director elected by the holders of shares of the Preferred Stock (a "Preferred Director") shall continue to serve as such director until the payment of all dividends on the Preferred Stock for at least four consecutive Dividend Periods, including the Series 6 Preferred Stock. Any Preferred Director may be removed by, and shall not be removed except by, the vote of the holders of record of the outstanding Series 6 Preferred Stock entitled to vote, voting separately as a class with all other holders of all other series of Preferred Stock entitled to vote on the matter, at a meeting of the Corporation's stockholders, or of the holders of the Series 6 Preferred Stock and all other series of Preferred Stock so entitled to vote thereon, called for that purpose. As long as dividends on the Series 6 Preferred Stock shall not have been paid for the preceding quarterly Dividend Period, (i) any vacancy in the office of any Preferred Director may be filled (except as provided in the following clause (ii)) by any instrument in writing signed by the remaining Preferred Director and filed with the Corporation, and (ii) in the case of the removal of any Preferred Director, the vacancy may be filled by the vote of the holders of the outstanding Series 6 Preferred Stock entitled to vote, voting together as a single class with the holders of all other series of Preferred Stock entitled to vote on the matter, at the same meeting at which such removal shall be voted. Each director appointed as aforesaid by the remaining Preferred Director shall be deemed, for all purposes hereof, to be Preferred Director. Any Preferred Director will

be deemed to be an Independent Director for purposes of the actions requiring the approval of a majority of the Independent Directors.

(c) Certain Voting Rights. The affirmative vote or consent of the holders of at least 67% of the outstanding voting power of each series of Preferred Stock of the Corporation, including the Series 6 Preferred Stock, will be required (i) to create any class or series of stock which shall, as to dividends or distribution of assets, rank prior to any outstanding series of Preferred Stock of the Corporation other than a series which shall not have any right to object to such creation or (ii) alter or change the provisions of the Corporation's Amended and Restated Certificate of Incorporation (including the terms of the Series 6 Preferred Stock), including by consolidation or merger, so as to adversely affect the voting powers, preferences or special rights of the holders of a series of Preferred Stock of the Corporation; provided, however, that if such amendment shall not adversely affect all series of Preferred Stock of the Corporation, such amendment need only be approved by at least 67% of the voting power of each series of Preferred Stock adversely affected thereby. Notwithstanding the foregoing, an alteration or change to the provisions of the Corporation's Amended and Restated Certificate of Incorporation shall not be deemed to affect the voting powers, preferences or special rights of the holders of the Series 6 Preferred Stock, provided that: (x) the Series 6 Preferred Stock remain outstanding with the terms thereof unchanged; or (y) the Series 6 Preferred Stock are converted in a merger or consolidation transaction into shares of the surviving or successor corporation or the direct or indirect parent of the surviving or successor corporation having terms identical to the terms of the Series 6 Preferred Stock set forth herein. Additionally, an increase in the amount of the authorized Preferred Stock or the creation or issuance of any other series of Preferred Stock or an increase in the amount of authorized shares of any such series, in each case ranking on a parity with or junior to the Series 6 Preferred Stock with respect to payment of dividends or distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect the voting powers, preferences or special rights of the holders of the Series 6 Preferred Stock.

#### Section 5. Independent Directors.

(a) Number; Definition. As long as any Series 6 Preferred Stock are outstanding, at least two directors on the Board of Directors shall be Independent Directors. As used herein, "Independent Director" means any director of the Corporation who is either (i) not a current officer or employee of the Corporation or (ii) a Preferred Director.

(b) Determination by Independent Directors. In determining whether any proposed action requiring their consent is in the best interests of the Corporation, the Independent Directors shall consider the interests of holders of both the Common Stock and the Preferred Stock, including, without limitation, the holders of the Series 6 Preferred Stock. In considering the interests of the holders of the Preferred Stock, including, without limitation, holders of the Series 6 Preferred Stock, the Independent Directors shall owe the same duties that the Independent Directors owe with respect to holders of shares of Common Stock.

Section 6. No Conversion Rights. The holders of Series 6 Preferred Stock shall not have any rights to convert such shares into shares of any other class or series of stock or into any other securities of, or any interest in, the Corporation.

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Section 7. No Sinking Fund. No sinking fund shall be established for the retirement or redemption of Series 6 Preferred Stock.

Section 8. Preemptive or Subscription Rights. No holder of Series 6 Preferred Stock of the Corporation shall, as such holder, have any preemptive right to purchase or subscribe for any additional shares of stock of the Corporation or any other security of the Corporation that it may issue or sell.

Section 9. No Other Rights. The Series 6 Preferred Stock shall not have any designations, preferences or relative, participating, optional or other special rights except as set forth in the Corporation's Amended and Restated Certificate of Incorporation or as otherwise required by law.

Section 10. Compliance with Applicable Law. Declaration by the Board of Directors and payment by the Corporation of dividends to holders of the Series 6 Preferred Stock and repurchase, redemption or other acquisition by the Corporation (or another entity as provided in subsection (a) of Section 3 hereof) of Series 6 Preferred Stock shall be subject in all respects to any and all restrictions and limitations placed on dividends, redemptions or other distributions by the Corporation (or any such other entity) under (i) laws, regulations and regulatory conditions or limitations applicable to or regarding the Corporation (or any such other entity) from time to time and (ii) agreements with federal or state regulatory or banking authorities with respect to the Corporation (or any such other entity) from time to time in effect.

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IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31<sup>st</sup> day of December, 2008.

**BANK OF AMERICA CORPORATION**

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

*[Signature Page to Certificate of Designations, Series 6]*

**CERTIFICATE OF DESIGNATION**  
**6.25% NONCUMULATIVE PERPETUAL PREFERRED STOCK, SERIES 7**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of preferred stock of the Corporation's previously authorized preferred stock, par value \$0.01 per share, such series to be designated 6.25% Noncumulative Perpetual Preferred Stock, Series 7, to consist of 50,000 shares (the "Series 7 Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

Section 1. Liquidation Value. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Series 7 Preferred Stock at the time outstanding will be entitled to receive out of the assets of the Corporation available for distribution to stockholders, before any distribution of assets is made to holders of Common Stock or any other class of stock ranking junior to the Series 7 Preferred Stock in the distribution of assets upon any liquidation, dissolution or winding up of the affairs of the Corporation, liquidating distributions in the amount of \$1,000 per share, plus any dividends declared thereon and not yet paid prior to the date of liquidation.

After payment of the full amount of the liquidating distributions to which they are entitled pursuant to the preceding paragraph, the holders of Series 7 Preferred Stock will have no right or claim to any of the remaining assets of the Corporation. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the full amount of the liquidating distributions on all outstanding Series 7 Preferred Stock and the corresponding amounts payable on all shares of other classes or series of capital stock of the Corporation ranking on a parity with the Series 7 Preferred Stock in the distribution of assets upon any liquidation, dissolution or winding up of the affairs of the Corporation, then the holders of the Series 7 Preferred Stock and such other classes or series of capital stock ranking on a parity with the Series 7 Preferred Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they otherwise respectively would be entitled.

For the purposes of this Section 1, the consolidation or merger of the Corporation with or into any other entity, or the sale, lease or conveyance of all or substantially all of the property or business of the Corporation, shall not be deemed to constitute the liquidation, dissolution or winding up of the Corporation.

Section 2. Dividends.

(a) Payment of Dividends. Holders of Series 7 Preferred Stock shall be entitled to receive, if, when and as authorized and declared by the Board of Directors, out of assets of the Corporation legally available therefor, cash dividends at an annual rate of 6.25% of the \$1,000 liquidation preference per share (equivalent to \$62.50 per share per annum), and no more. Such noncumulative cash dividends shall be payable, if authorized and declared, quarterly on March 30, June 30, September 30 and December 30 of each year, or, if any such day is not a Business Day (as defined herein), on the preceding Business Day (each such date, "Dividend Payment Date"). Each authorized and declared dividend shall be payable to holders of record of the Series 7 Preferred Stock as they appear on the stock books of the Corporation at the close of business on such record date, not more than 30 calendar days nor less than 10 calendar days preceding the Dividend Payment Date therefor, as may be determined by the Board of Directors (each such date, a "Record Date"); provided, however, that if the date fixed for redemption of any of the Series 7 Preferred Stock occurs after a dividend is authorized and declared but before it is paid, such dividend shall be paid as part of the redemption price to the person to whom the redemption price is paid. Quarterly dividend periods (each, a "Dividend Period") shall commence on and include the first day of each Dividend Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on December 30, 2008), and shall end on and include the last day, of the quarterly period in which the corresponding Dividend Payment Date occurs.

The amount of dividends payable for any Dividend Period which, as to any share of Series 7 Preferred Stock (determined by reference to the issuance date and the redemption or retirement date thereof), is greater or less than a full Dividend Period shall be computed on the basis of the number of days elapsed in the period using a 360-day year composed of twelve 30-day months.

Holders of the Series 7 Preferred Stock shall not be entitled to any interest, or any sum of money in lieu of interest, in respect of any dividend payment or payments on the Series 7 Preferred Stock authorized and declared by the Board of Directors that may be unpaid.

(b) Dividends Noncumulative. The right of holders of Series 7 Preferred Stock to receive dividends is noncumulative. Accordingly, if the Board of Directors does not authorize or declare a dividend payable in respect of any Dividend Period, holders of Series 7 Preferred Stock shall have no right to receive a dividend in respect of such Dividend Period and the Corporation shall have no obligation to pay a dividend in respect of such Dividend Period, whether or not dividends are authorized and declared payable in respect of any prior or subsequent Dividend Period.

(c) Priority as to Dividends; Limitations on Dividends on Junior Equity. If full dividends on the Series 7 Preferred Stock for a completed Dividend Period shall not have been declared and paid, or declared and a sum sufficient for the payment thereof shall not have been set apart for such payments, no dividends or distributions shall be authorized, declared or paid or set aside for payment (other than as provided in the second paragraph of this Section 2(c)) during the next subsequent Dividend Period with respect to the Common Stock or any other stock of the Corporation ranking junior to the Series 7 Preferred Stock as to dividends or amounts upon



liquidation, dissolution or winding up of the affairs of the Corporation (together with the Common Stock, "Junior Equity") or any stock on parity with the Series 7 Preferred Stock as to dividends or amounts upon liquidation, dissolution or winding up of the affairs of the Corporation ("Parity Stock"), nor shall any Junior Equity or Parity Stock be redeemed, purchased or otherwise acquired for any consideration (or any monies to be paid to or made available for a sinking fund for the redemption of any such stock) by the Corporation (except by conversion into or exchange for other Junior Equity), until such time as dividends on all outstanding Series 7 Preferred Stock for at least four consecutive Dividend Periods have been paid in full.

When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) for any Dividend Period on the Series 7 Preferred Stock, all dividends declared on the Series 7 Preferred Stock and any other series ranking on a parity as to dividends with the Series 7 Preferred Stock shall be distributed *pro rata* so that the amount of dividends declared per share on the Series 7 Preferred Stock and each such other series of capital stock shall in all cases bear to each other the same ratio that full dividends, for such Dividend Period, per share of Series 7 Preferred Stock (which shall not include any accumulation in respect of unpaid dividends for prior Dividend Periods) and full dividends, including required or permitted accumulations, if any, on the stock of each other series ranking on a parity as to dividends with the Series 7 Preferred Stock bear to each other.

(d) So long as any shares of Series 7 Preferred Stock are outstanding, the Corporation shall not authorize or issue any class or series of stock with a preference as to payment of distributions or amounts upon liquidation, dissolution or winding up that is senior in right to the preferences of the Series 7 Preferred Stock as to payment of distributions or amounts upon liquidation, dissolution or winding up.

(e) Any reference to "dividends" or "distributions" in this Section 2 shall not be deemed to include any distribution made in connection with any voluntary or involuntary dissolution, liquidation or winding up of the Corporation.

Section 3. Optional Redemption. The Series 7 Preferred Stock will not be redeemable prior to March 18, 2010. On or after March 18, 2010, the Series 7 Preferred Stock will be redeemable at the option of the Corporation, in whole or in part, at any time or from time to time, at a cash redemption price equal to the sum of the liquidation preference thereof plus the amount of the declared and unpaid dividends thereon from the beginning of the Dividend Period in which the redemption occurs to the date of redemption.

In the event that fewer than all the outstanding shares of Series 7 Preferred Stock are to be redeemed, the number of shares of Series 7 Preferred Stock to be redeemed shall be determined by the Board of Directors, and the shares to be redeemed shall be determined by lot or *pro rata* as may be determined by the Board of Directors or by any other method as may be determined by the Board of Directors in its sole discretion to be equitable, provided that such method satisfies any applicable requirements of any securities exchange (if any) on which the shares of Series 7 Preferred Stock are then listed.

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Unless full dividends on the Series 7 Preferred Stock in respect of the most recently completed Dividend Period have been or contemporaneously are declared and paid or full dividends have been declared and a sum sufficient for the payment thereof has been set apart for payment in respect of the most recently completed Dividend Period, no Series 7 Preferred Stock shall be redeemed unless all outstanding shares of Series 7 Preferred Stock are redeemed and the Corporation shall not purchase or otherwise acquire any Series 7 Preferred Stock; provided, however, that the Corporation may purchase or acquire Series 7 Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series 7 Preferred Stock.

The Corporation will give notice of redemption of the Series 7 Preferred Stock by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days' prior to the redemption date. A failure to give such notice or any defect in the notice or in the Corporation's mailing will not affect the validity of the proceedings for the given redemption of any Series 7 Preferred Stock except as to the holder to whom notice was defective or not given. Each notice shall state: (i) the redemption date; (ii) the redemption price and (iii) the number of shares of Series 7 Preferred Stock to be redeemed.

A notice by the Corporation pursuant to this Section 3 shall be sufficiently given if in writing and mailed, first class postage prepaid, to each record holder of Series 7 Preferred Stock at the holder's address as it appears in the records of the Corporation's transfer agent. In any case where notice is given by mail, neither the failure to mail such notice nor any defect in the notice to any particular holder shall affect the sufficiency of such notice, to any other holder. Any notice mailed to a holder in the manner described above shall be deemed given on the date mailed, whether or not the holder actually receives the notice. A notice of redemption shall be given not less than 30 days and not more than 60 days prior to the date of redemption specified in the notice, and shall specify (i) the redemption date, (ii) the number of Series 7 Preferred Stock to be redeemed, (iii) the redemption price and (iv) the manner in which holders of Series 7 Preferred Stock called for redemption may obtain payment of the redemption price in respect of those shares.

Any shares of Series 7 Preferred Stock that are duly called for redemption pursuant to this Section 3 shall no longer be deemed to be outstanding for any purpose from and after that time that the Corporation shall have irrevocably deposited with the paying agent identified in the notice of redemption funds in an amount equal to the aggregate redemption price. From and after that time, the holders of the Series 7 Preferred Stock so called for redemption shall have no further rights as stockholders of the Corporation and in lieu thereof shall have only the right to receive the redemption price, without interest.

Series 7 Preferred Stock redeemed pursuant to this Section 3 or purchased or otherwise acquired for value by the Corporation shall, after such acquisition, have the status of authorized and unissued shares of Preferred Stock and may be reissued by the Corporation at any time as shares of any series of Preferred Stock other than as Series 7 Preferred Stock.

Section 4. Voting Rights.

(a) General. Except as expressly provided in this Section 4 and as required by law, holders of Series 7 Preferred Stock shall have no voting rights.

The holders of the Series 7 Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Series 7 Preferred Stock shall be entitled to 5 votes.

When the holders of Series 7 Preferred Stock are entitled to vote as a separate series, each Series 7 Preferred Stock will be entitled to 40 votes and may designate up to 40 proxies, with each such proxy having the right to vote a whole number of votes, totaling 40 votes per share of Series 7 Preferred Stock.

When the holders of Series 7 Preferred Stock are entitled to vote together as a class with all other series of Preferred Stock pursuant to subsection (b) of this Section 4 hereof, each share of Series 7 Preferred stock will be entitled to one vote.

(b) Right to Elect Directors. If, at the time of any annual meeting of the Corporation's stockholders for the election of directors, the Corporation has failed to pay or declare and set aside for payment all scheduled dividends during any six Dividend Periods (whether or not consecutive) on the Series 7 Preferred Stock, the number of directors then constituting the Board of Directors of the Corporation will be increased by two (if not already increased by two due to failure to pay or declare and set aside dividends on any series of Preferred Stock), and the holders of the Series 7 Preferred Stock, voting separately as a class with all other series of Preferred Stock then entitled by the terms of such Preferred Stock to vote for additional directors, will be entitled to elect such two additional directors to serve on the Corporation's Board of Directors at each such annual meeting. Each director elected by the holders of shares of the Preferred Stock (a "Preferred Director") shall continue to serve as such director until the payment of all dividends on the Preferred Stock for at least four consecutive Dividend Periods, including the Series 7 Preferred Stock. Any Preferred Director may be removed by, and shall not be removed except by, the vote of the holders of record of the outstanding Series 7 Preferred Stock entitled to vote, voting separately as a class with all other holders of all other series of Preferred Stock entitled to vote on the matter, at a meeting of the Corporation's stockholders, or of the holders of the Series 7 Preferred Stock and all other series of Preferred Stock so entitled to vote thereon, called for that purpose. As long as dividends on the Series 7 Preferred Stock shall not have been paid for the preceding quarterly Dividend Period, (i) any vacancy in the office of any Preferred Director may be filled (except as provided in the following clause (ii)) by any instrument in writing signed by the remaining Preferred Director and filed with the Corporation, and (ii) in the case of the removal of any Preferred Director, the vacancy may be filled by the vote of the holders of the outstanding Series 7 Preferred Stock entitled to vote, voting together as a single class with the holders of all other series of Preferred Stock entitled to vote on the matter, at the same meeting at which such removal shall be voted. Each director appointed as aforesaid by the remaining Preferred Director shall be deemed, for all purposes hereof, to be Preferred Director. Any Preferred Director will

be deemed to be an Independent Director for purposes of the actions requiring the approval of a majority of the Independent Directors.

(c) Certain Voting Rights. The affirmative vote or consent of the holders of at least 67% of the outstanding voting power of each series of Preferred Stock of the Corporation, including the Series 7 Preferred Stock, will be required (i) to create any class or series of stock which shall, as to dividends or distribution of assets, rank prior to any outstanding series of Preferred Stock of the Corporation other than a series which shall not have any right to object to such creation or (ii) alter or change the provisions of the Corporation's Amended and Restated Certificate of Incorporation (including the terms of the Series 7 Preferred Stock), including by consolidation or merger, so as to adversely affect the voting powers, preferences or special rights of the holders of a series of Preferred Stock of the Corporation; provided, however, that if such amendment shall not adversely affect all series of Preferred Stock of the Corporation, such amendment need only be approved by at least 67% of the voting power of each series of Preferred Stock adversely affected thereby. Notwithstanding the foregoing, an alteration or change to the provisions of the Corporation's Amended and Restated Certificate of Incorporation shall not be deemed to affect the voting powers, preferences or special rights of the holders of the Series 7 Preferred Stock, provided that: (x) the Series 7 Preferred Stock remain outstanding with the terms thereof unchanged; or (y) the Series 7 Preferred Stock are converted in a merger or consolidation transaction into shares of the surviving or successor corporation or the direct or indirect parent of the surviving or successor corporation having terms identical to the terms of the Series 7 Preferred Stock set forth herein. Additionally, an increase in the amount of the authorized Preferred Stock or the creation or issuance of any other series of Preferred Stock or an increase in the amount of authorized shares of any such series, in each case ranking on a parity with or junior to the Series 7 Preferred Stock with respect to payment of dividends or distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect the voting powers, preferences or special rights of the holders of the Series 7 Preferred Stock.

#### Section 5. Independent Directors.

(a) Number: Definition. As long as any Series 7 Preferred Stock are outstanding, at least two directors on the Board of Directors shall be Independent Directors. As used herein, "Independent Director" means any director of the Corporation who is either (i) not a current officer or employee of the Corporation or (ii) a Preferred Director.

(b) Determination by Independent Directors. In determining whether any proposed action requiring their consent is in the best interests of the Corporation, the Independent Directors shall consider the interests of holders of both the Common Stock and the Preferred Stock, including, without limitation, the holders of the Series 7 Preferred Stock. In considering the interests of the holders of the Preferred Stock, including, without limitation, holders of the Series 7 Preferred Stock, the Independent Directors shall owe the same duties that the Independent Directors owe with respect to holders of shares of Common Stock.

Section 6. No Conversion Rights. The holders of Series 7 Preferred Stock shall not have any rights to convert such shares into shares of any other class or series of stock or into any other securities of, or any interest in, the Corporation.

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Section 7. No Sinking Fund. No sinking fund shall be established for the retirement or redemption of Series 7 Preferred Stock.

Section 8. Preemptive or Subscription Rights. No holder of Series 7 Preferred Stock of the Corporation shall, as such holder, have any preemptive right to purchase or subscribe for any additional shares of stock of the Corporation or any other security of the Corporation that it may issue or sell.

Section 9. No Other Rights. The Series 7 Preferred Stock shall not have any designations, preferences or relative, participating, optional or other special rights except as set forth in the Corporation's Amended and Restated Certificate of Incorporation or as otherwise required by law.

Section 10. Compliance with Applicable Law. Declaration by the Board of Directors and payment by the Corporation of dividends to holders of the Series 7 Preferred Stock and repurchase, redemption or other acquisition by the Corporation (or another entity as provided in subsection (a) of Section 3 hereof) of Series 7 Preferred Stock shall be subject in all respects to any and all restrictions and limitations placed on dividends, redemptions or other distributions by the Corporation (or any such other entity) under (i) laws, regulations and regulatory conditions or limitations applicable to or regarding the Corporation (or any such other entity) from time to time and (ii) agreements with federal or state regulatory or banking authorities with respect to the Corporation (or any such other entity) from time to time in effect.

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IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31<sup>st</sup> day of December, 2008.

**BANK OF AMERICA CORPORTION**

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

*[Signature Page to Certificate of Designations, Series 7]*

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**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS**

**Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware**

**8.625% NON-CUMULATIVE PREFERRED STOCK, SERIES 8  
(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**8.625% NON-CUMULATIVE PREFERRED STOCK, SERIES 8**

(1) Number of Shares and Designation. 89,100 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as 8.625% Non-Cumulative Preferred Stock, Series 8 (hereinafter called the "Preferred Stock, Series 8").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 8, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable in arrears, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof) quarterly, on February 28, May 28, August 28 and November 28 of each year (the "Payment Dates") commencing on February 28, 2009; provided that if any such Payment Date is not a New York Business Day, the Payment Date will be the next succeeding day that is a New York Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 8, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 days nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b)(i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on November 28, 2008) and shall end on and exclude the next succeeding Payment Date. The dividend rate on the shares of Preferred Stock, Series 8 for each Dividend Period shall be 8.625% per annum, of the \$30,000 liquidation preference per share of Preferred Stock, Series 8.



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(ii) The amount of dividends payable for each full Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 8, shall be computed by dividing the dividend rate of 8.625% per annum by four and applying the resulting rate to the amount of \$30,000 per share. The amount of dividends payable for any period shorter than a full Dividend Period on the Preferred Stock, Series 8, shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. The amount of dividends payable on the Preferred Stock, Series 8, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 8 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 8 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 8 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 8, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 8, all dividends declared upon shares of the Preferred Stock, Series 8, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared pro rata so that the amount of dividends declared per share on the Preferred Stock, Series 8, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 8 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 8 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 8 unless full dividends on all outstanding shares of Preferred Stock, Series 8 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 8 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) conversions or exchanges for the Corporation's capital stock ranking junior to Preferred Stock, Series 8 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 8 in the event that dividends have not been declared or paid on the Preferred Stock, Series 8 in respect of any prior Dividend Period. If

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the full dividend on the Preferred Stock, Series 8 is not paid for any Dividend Period, the holders of Preferred Stock, Series 8 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 8 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 8 if at the same time any arrears exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 8.

(f) Holders of shares of the Preferred Stock, Series 8, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 8. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 8, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 8, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 8, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 8, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 8, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 8, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 8, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 8, as provided in this Section (3), the holders of Preferred Stock, Series 8 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 8, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 8, as provided in this Section (3), but not

prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 8, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 8, shall not be entitled to share therein.

(4) **Redemption.** (a) The Preferred Stock, Series 8, may not be redeemed prior to May 28, 2013. On and after May 28, 2013, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 8, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 8 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 8 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 8, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (i) the redemption date; (ii) the number of shares of Preferred Stock, Series 8, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; and (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 8, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders of such shares of Preferred Stock, Series 8, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 8, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 8, not previously called for redemption by lot or pro rata or by

any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 8 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 8 will have no right to require redemption of any shares of Preferred Stock, Series 8.

(5) Terms Dependent on Regulatory Changes. If, (a) the Corporation (by election or otherwise) is subject to any law, rule, regulation or guidance (together, "Regulations") relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as "Tier 1" in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such "Tier 1" capital (such capital described in either (x) or (y) is referred to below as "Tier 1 Capital"), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 8 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 8 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 8 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 8 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation's right to redeem the Preferred Stock, Series 8 on and after May 28, 2013 pursuant to Section (5) hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation's right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 8 (upon a non-payment of dividends on the Preferred Stock, Series 8) shall become subject to additional restrictions (other than those set forth in Section (2)(d) hereof) pursuant to the terms of the Preferred Stock, Series 8; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 8, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section (5)(iii), if it

would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 8 so as to affect the shares of the Preferred Stock, Series 8 adversely.

As used above, the term “Required Unrestricted Tier 1 Provision” means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 8 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 8 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 8 of any such changes in the terms of the Preferred Stock, Series 8 made pursuant to the terms of this Section (5) on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

For the avoidance of doubt, “amend”, “modify”, “change” and words of similar effect used in this Section (5) mean that the Preferred Stock, Series 8 shall have such additional or different rights, powers and preferences, and such qualifications, limitations and restrictions as may be established by the Board of Directors (or a duly authorized committee thereof) pursuant to this Section (5), subject to the limitations set forth herein.

(6) Voting Rights. The Preferred Stock, Series 8, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 8, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a “Nonpayment”), the holders of outstanding shares of the Preferred Stock, Series 8, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 8, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors to the Board of Directors of the Corporation at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders on the terms set forth below. At elections for such directors, or on any other matters requiring their consent and approval, each holder of the Preferred Stock, Series 8, shall be entitled to three votes for each share of Preferred Stock, Series 8 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such

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outstanding shares of Preferred Stock, Series 8 (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 8, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 8, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 8, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 8, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 8, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 8, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 8, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 8, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 8, or of the holders thereof;

provided, however, that (a) any increase in the amount of issued Preferred Stock, Series 8 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 8, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up and (b) a conversion of the Offered Preferred Stock in a merger or consolidation

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transaction into shares of the surviving or successor corporation or the direct or indirect parent of the surviving or successor corporation having terms substantially identical to the terms of the Offered Preferred Stock shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 8, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 8, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 8:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 8 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 8 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 8.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 8 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 8 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 8, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 8, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 8, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 8, if the holders of such class of stock and the Preferred Stock, Series 8, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

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(ii) junior to the Preferred Stock, Series 8, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 8, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 1," "Floating Rate Non-Cumulative Preferred Stock, Series 2," "6.375% Non-Cumulative Preferred Stock, Series 3," "Floating Rate Non-Cumulative Preferred Stock, Series 4," "Floating Rate Non-Cumulative Preferred Stock, Series 5," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "Cumulative Redeemable Preferred Stock, Series B," "Floating Rate Non-Cumulative Preferred Stock, Series E," "6.204% Non-Cumulative Preferred Stock, Series D" "Floating Rate Non-Cumulative Preferred Stock, Series F," "Adjustable Rate Non-Cumulative Preferred Stock, Series G," "8.20% Non-Cumulative Preferred Stock, Series H," "6.625% Non-Cumulative Preferred Stock, Series I," "7.25% Non-Cumulative Preferred Stock, Series J," "7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L," "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K," "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M," and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 8, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 8, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 8, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed."



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IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set her hand this 31st day of December, 2008.

**BANK OF AMERICA CORPORATION**

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

*[Signature Page to Certificate of Designations, Series 8]*

**CERTIFICATE OF DESIGNATIONS**

**OF**

**FIXED RATE CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES Q**

**OF**

**BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), in accordance with the provisions of Sections 141 and 151 of the General Corporation Law of the State of Delaware, does hereby certify:

At meetings duly convened and held by the board of directors of the Corporation (the "Board of Directors") on July 23, 2008 and October 15, 2008, the Board of Directors duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's Preferred Stock, and (b) appointing a Special Committee (the "Committee") of the Board of Directors to act on behalf of the Board of Directors in establishing the number of authorized shares, the dividend rate, the voting and other powers, designations, preferences and rights, and the qualifications, limitations and restrictions thereof, of such series of Preferred Stock.

Thereafter, on January 7, 2009, the Committee duly adopted the following resolution creating a series of 400,000 shares of Preferred Stock of the Corporation designated as "Fixed Rate Cumulative Perpetual Preferred Stock, Series Q" by written consent

**RESOLVED**, that pursuant to the provisions of the certificate of incorporation and the bylaws of the Corporation and applicable law, and the resolutions adopted by the Board of Directors, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

Part 1. Designation and Number of Shares. There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Fixed Rate Cumulative Perpetual Preferred Stock, Series Q" (the "Designated Preferred Stock"). The authorized number of shares of Designated Preferred Stock shall be 400,000.

Part 2. Standard Provisions. The Standard Provisions contained in Annex A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this Certificate of Designations to the same extent as if such provisions had been set forth in full herein.

Part 3. Definitions. The following terms are used in this Certificate of Designations (including the Standard Provisions in Annex A hereto) as defined below:

(a) "Common Stock" means the common stock, par value \$0.01 per share, of the Corporation.

(b) "Dividend Payment Date" means February 15, May 15, August 15 and November 15 of each year.

(c) "Junior Stock" means the Common Stock, and any other class or series of stock of the Corporation the terms of which expressly provide that it ranks junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation.

(d) "Liquidation Amount" means \$25,000 per share of Designated Preferred Stock.

(e) "Minimum Amount" means \$2,500,000,000.

(f) "Parity Stock" means any class or series of stock of the Corporation (other than Designated Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include the Corporation's (i) 7% Cumulative Redeemable Preferred Stock, Series B; (ii) 6.204% Non-Cumulative Preferred Stock, Series D; (iii) Floating Rate Non-Cumulative Preferred Stock, Series E; (iv) Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding); (v) Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding); (vi) 8.20% Non-Cumulative Preferred Stock, Series H; (vii) 6.625% Non-Cumulative Preferred Stock, Series I; (viii) 7.25% Non-Cumulative Preferred Stock, Series J; (ix) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K; (x) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L; (xi) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M; (xii) Fixed Rate Cumulative Perpetual Preferred Stock, Series N; (xiii) Floating Rate Non-Cumulative Preferred Stock, Series 1; (xiv) Floating Rate Non-Cumulative Preferred Stock, Series 2; (xv) 6.375% Non-Cumulative Preferred Stock, Series 3; (xvi) Floating Rate Non-Cumulative Preferred Stock, Series 4; (xvii) Floating Rate Non-Cumulative Preferred Stock, Series 5; (xviii) 6.70% Noncumulative Perpetual Preferred Stock, Series 6; (xix) 6.25% Noncumulative Perpetual Preferred Stock, Series 7; and (xx) 8.625% Non-Cumulative Preferred Stock, Series 8.

(g) "Signing Date" means October 26, 2008.

(h) "UST Preferred Stock" means the Corporation's Fixed Rate Cumulative Perpetual Preferred Stock, Series N.

Part. 4. Certain Voting Matters. Holders of shares of Designated Preferred Stock will be entitled to one vote for each such share on any matter on which holders of Designated Preferred Stock are entitled to vote, including any action by written consent.

*[Remainder of Page Intentionally Left Blank]*

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IN WITNESS WHEREOF, Bank of America Corporation has caused this Certificate of Designations to be signed by Teresa M. Brenner, its Associate General Counsel, this 7<sup>th</sup> day of January, 2009.

BANK OF AMERICA CORPORATION

By: /s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

**STANDARD PROVISIONS**

Section 1. General Matters. Each share of Designated Preferred Stock shall be identical in all respects to every other share of Designated Preferred Stock. The Designated Preferred Stock shall be perpetual, subject to the provisions of Section 5 of these Standard Provisions that form a part of the Certificate of Designations. The Designated Preferred Stock shall rank equally with Parity Stock and shall rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Corporation.

Section 2. Standard Definitions. As used herein with respect to Designated Preferred Stock:

(a) “Applicable Dividend Rate” means (i) during the period from the Original Issue Date to, but excluding, the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 5% per annum and (ii) from and after the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 9% per annum.

(b) “Appropriate Federal Banking Agency” means the “appropriate Federal banking agency” with respect to the Corporation as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

(c) “Business Combination” means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Corporation’s stockholders.

(d) “Business Day” means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

(e) “Bylaws” means the bylaws of the Corporation, as they may be amended from time to time.

(f) “Certificate of Designations” means the Certificate of Designations or comparable instrument relating to the Designated Preferred Stock, of which these Standard Provisions form a part, as it may be amended from time to time.

(g) “Charter” means the Corporation’s certificate or articles of incorporation, articles of association, or similar organizational document.

(h) “Dividend Period” has the meaning set forth in Section 3(a).

(i) “Dividend Record Date” has the meaning set forth in Section 3(a).

(j) “Liquidation Preference” has the meaning set forth in Section 4(a).

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(k) "Original Issue Date" means the date on which shares of Designated Preferred Stock are first issued.

(l) "Preferred Director" has the meaning set forth in Section 7(b).

(m) "Preferred Stock" means any and all series of preferred stock of the Corporation, including the Designated Preferred Stock.

(n) "Qualified Equity Offering" means the sale and issuance for cash by the Corporation to persons other than the Corporation or any of its subsidiaries after the Original Issue Date of shares of perpetual Preferred Stock, Common Stock or any combination of such stock, that, in each case, qualify as and may be included in Tier 1 capital of the Corporation at the time of issuance under the applicable risk-based capital guidelines of the Corporation's Appropriate Federal Banking Agency (other than any such sales and issuances (i) made by the Corporation (or any successor by Business Combination) under the Troubled Asset Relief Program, (ii) to the extent such sales or issuances provided the basis for the redemption of other preferred stock of the Corporation that was originally issued by the Corporation (or any such successor) under the Troubled Asset Relief Program or (iii) made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to October 13, 2008).

(o) "Share Dilution Amount" has the meaning set forth in Section 3(b).

(p) "Standard Provisions" mean these Standard Provisions that form a part of the Certificate of Designations relating to the Designated Preferred Stock.

(q) "Successor Preferred Stock" has the meaning set forth in Section 5(a).

(r) "Voting Parity Stock" means, with regard to any matter as to which the holders of Designated Preferred Stock are entitled to vote as specified in Sections 7(a) and 7(b) of these Standard Provisions that form a part of the Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

### Section 3. Dividends.

(a) Rate. Holders of Designated Preferred Stock shall be entitled to receive, on each share of Designated Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate on (i) the Liquidation Amount per share of Designated Preferred Stock and (ii) the amount of accrued and unpaid dividends for any prior Dividend Period on such share of Designated Preferred Stock, if any. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (*i.e.*, no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 20

calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “Dividend Period”, provided that the initial Dividend Period shall be the period from and including the Original Issue Date to, but excluding, the next Dividend Payment Date.

Dividends that are payable on Designated Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on Designated Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Designated Preferred Stock on any Dividend Payment Date will be payable to holders of record of Designated Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of Designated Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Designated Preferred Stock as specified in this Section 3 (subject to the other provisions of the Certificate of Designations).

(b) Priority of Dividends. So long as any share of Designated Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than dividends payable solely in shares of Common Stock) or Parity Stock, subject to the immediately following paragraph in the case of Parity Stock, and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Corporation or any of its subsidiaries unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Designated Preferred Stock on the applicable record date). The foregoing limitation shall not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business (including purchases to offset the Share Dilution Amount (as defined below) pursuant to a publicly announced repurchase plan) and consistent with past practice, *provided* that any purchases to offset the Share Dilution Amount shall in no event exceed the Share Dilution Amount; (ii) purchases or other acquisitions by a broker-dealer subsidiary of the Corporation solely for the purpose of market-making, stabilization or customer facilitation transactions in

Junior Stock or Parity Stock in the ordinary course of its business; (iii) purchases by a broker-dealer subsidiary of the Corporation of capital stock of the Corporation for resale pursuant to an offering by the Corporation of such capital stock underwritten by such broker-dealer subsidiary; (iv) any dividends or distributions of rights or Junior Stock in connection with a stockholders' rights plan or any redemption or repurchase of rights pursuant to any stockholders' rights plan; (v) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians; and (vi) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock. "Share Dilution Amount" means the increase in the number of diluted shares outstanding (determined in accordance with generally accepted accounting principles in the United States, and as measured from the date of the Corporation's consolidated financial statements most recently filed with the Securities and Exchange Commission prior to the Original Issue Date) resulting from the grant, vesting or exercise of equity-based compensation to employees and equitably adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon Designated Preferred Stock and any shares of Parity Stock, all dividends declared on Designated Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the shares of Designated Preferred Stock (including, if applicable as provided in Section 3(a) above, dividends on such amount) and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other. If the Board of Directors or a duly authorized committee of the Board of Directors determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Corporation will provide written notice to the holders of Designated Preferred Stock prior to such Dividend Payment Date.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for



such payment, and holders of Designated Preferred Stock shall not be entitled to participate in any such dividends.

Section 4. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Designated Preferred Stock shall be entitled to receive for each share of Designated Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, subject to the rights of any creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to Designated Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (i) the Liquidation Amount per share and (ii) the amount of any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount), whether or not declared, to the date of payment (such amounts collectively, the "Liquidation Preference").

(b) Partial Payment. If in any distribution described in Section 4(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution, holders of Designated Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 4, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Designated Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

Section 5. Redemption.

(a) Optional Redemption. Except as provided below, the Designated Preferred Stock may not be redeemed prior to the later of (i) the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date and (ii) the date on which all outstanding shares of UST Preferred Stock have been redeemed, repurchased or otherwise acquired by the Corporation. On or after the later of (i) the first Dividend Payment Date falling on or after the

third anniversary of the Original Issue Date and (ii) the date on which all outstanding shares of UST Preferred Stock have been redeemed, repurchased or otherwise acquired by the Corporation, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption.

Notwithstanding the foregoing, prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency and subject to the requirement that all outstanding shares of UST Preferred Stock shall previously have been redeemed, repurchased or otherwise acquired by the Corporation, may redeem, in whole or in part, at any time and from time to time, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption; *provided* that (x) the Corporation (or any successor by Business Combination) has received aggregate gross proceeds of not less than the Minimum Amount (plus the "Minimum Amount" as defined in the relevant certificate of designations for each other outstanding series of preferred stock of such successor (the "Successor Preferred Stock") that was originally issued under the Troubled Asset Relief Program) from one or more Qualified Equity Offerings (including Qualified Equity Offerings of such successor), and (y) the aggregate redemption price of the Designated Preferred Stock (and any Successor Preferred Stock) redeemed pursuant to this paragraph may not exceed the aggregate net cash proceeds received by the Corporation (or any successor by Business Combination) from such Qualified Equity Offerings (including Qualified Equity Offerings of such successor).

The redemption price for any shares of Designated Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

(b) No Sinking Fund. The Designated Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Designated Preferred Stock will have no right to require redemption or repurchase of any shares of Designated Preferred Stock.

(c) Notice of Redemption. Notice of every redemption of shares of Designated Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of

record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Designated Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Designated Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(d) Partial Redemption. In case of any redemption of part of the shares of Designated Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Designated Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

(f) Status of Redeemed Shares. Shares of Designated Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Designated Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Designated Preferred Stock).

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Section 6. Conversion. Holders of Designated Preferred Stock shares shall have no right to exchange or convert such shares into any other securities.

Section 7. Voting Rights.

(a) General. The holders of Designated Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) Preferred Stock Directors. Whenever, at any time or times, dividends payable on the shares of Designated Preferred Stock have not been paid for an aggregate of six quarterly Dividend Periods or more, whether or not consecutive, the authorized number of directors of the Corporation shall automatically be increased by two and the holders of the Designated Preferred Stock shall have the right, with holders of shares of any one or more other classes or series of Voting Parity Stock outstanding at the time, voting together as a class, to elect two directors (hereinafter the "Preferred Directors" and each a "Preferred Director") to fill such newly created directorships at the Corporation's next annual meeting of stockholders (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting of stockholders until all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been declared and paid in full at which time such right shall terminate with respect to the Designated Preferred Stock, except as herein or by law expressly provided, subject to re-vesting in the event of each and every subsequent default of the character above mentioned; *provided* that it shall be a qualification for election for any Preferred Director that the election of such Preferred Director shall not cause the Corporation to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Corporation may then be listed or traded that listed or traded companies must have a majority of independent directors. Upon any termination of the right of the holders of shares of Designated Preferred Stock and Voting Parity Stock as a class to vote for directors as provided above, the Preferred Directors shall cease to be qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of Preferred Directors elected pursuant hereto. Any Preferred Director may be removed at any time, with or without cause, and any vacancy created thereby may be filled, only by the affirmative vote of the holders a majority of the shares of Designated Preferred Stock at the time outstanding voting separately as a class together with the holders of shares of Voting Parity Stock, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.

(c) Class Voting Rights as to Particular Matters. So long as any shares of Designated Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least 66 <sup>2</sup>/<sub>3</sub>% of the shares of Designated Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior Stock. Any amendment or alteration of the Certificate of Designations for the Designated Preferred Stock or the Charter to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Corporation ranking senior to Designated Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(ii) Amendment of Designated Preferred Stock. Any amendment, alteration or repeal of any provision of the Certificate of Designations for the Designated Preferred Stock or the Charter (including, unless no vote on such merger or consolidation is required by Section 7(c)(iii) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Designated Preferred Stock; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Designated Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Designated Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Designated Preferred Stock immediately prior to such consummation, taken as a whole;

*provided, however,* that for all purposes of this Section 7(c), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Designated Preferred Stock necessary to satisfy preemptive or similar rights granted by the Corporation to other persons prior to the Signing Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking equally with and/or junior to Designated Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Designated Preferred Stock.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Designated Preferred Stock shall be required pursuant to Section 7(c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of the Designated Preferred Stock shall have been redeemed, or shall have

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been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 5 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the holders of Designated Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Charter, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Designated Preferred Stock is listed or traded at the time.

Section 8. Record Holders. To the fullest extent permitted by applicable law, the Corporation and the transfer agent for Designated Preferred Stock may deem and treat the record holder of any share of Designated Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

Section 9. Notices. All notices or communications in respect of Designated Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of Designated Preferred Stock in any manner permitted by such facility.

Section 10. No Preemptive Rights. No share of Designated Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

Section 11. Replacement Certificates. The Corporation shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Corporation.

Section 12. Other Rights. The shares of Designated Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Charter or as provided by applicable law.

**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**FIXED RATE CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES R**  
**OF**  
**BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware thereof, does hereby certify:

The board of directors of the Corporation (the "Board of Directors") or an applicable committee of the Board of Directors, in accordance with the certificate of incorporation and bylaws of the Corporation and applicable law, adopted the following resolution on January 16, 2009 creating a series of 800,000 shares of Preferred Stock of the Corporation designated as "Fixed Rate Cumulative Perpetual Preferred Stock, Series R".

**RESOLVED**, that pursuant to the provisions of the certificate of incorporation and the bylaws of the Corporation and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

Part 1. Designation and Number of Shares. There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Fixed Rate Cumulative Perpetual Preferred Stock, Series R" (the "Designated Preferred Stock"). The authorized number of shares of Designated Preferred Stock shall be 800,000.

Part 2. Standard Provisions. The Standard Provisions contained in Annex A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this Certificate of Designations to the same extent as if such provisions had been set forth in full herein.

Part 3. Definitions. The following terms are used in this Certificate of Designations (including the Standard Provisions in Annex A hereto) as defined below:

- (a) "Common Stock" means the common stock, par value \$0.01 per share, of the Corporation.
- (b) "Dividend Payment Date" means February 15, May 15, August 15 and November 15 of each year.

(c) “Junior Stock” means the Common Stock, and any other class or series of stock of the Corporation the terms of which expressly provide that it ranks junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation.

(d) “Liquidation Amount” means \$25,000 per share of Designated Preferred Stock.

(e) “Parity Stock” means any class or series of stock of the Corporation (other than Designated Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include the Corporation’s (i) 7% Cumulative Redeemable Preferred Stock, Series B; (ii) 6.204% Non-Cumulative Preferred Stock, Series D; (iii) Floating Rate Non-Cumulative Preferred Stock, Series E; (iv) Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding); (v) Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding); (vi) 8.20% Non-Cumulative Preferred Stock, Series H; (vii) 6.625% Non-Cumulative Preferred Stock, Series I; (viii) 7.25% Non-Cumulative Preferred Stock, Series J; (ix) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K; (x) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L; (xi) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (xii) Fixed Rate Cumulative Perpetual Preferred Stock, Series N, (xiii) Floating Rate Non-Cumulative Preferred Stock, Series 1, (xiv) Floating Rate Non-Cumulative Preferred Stock, Series 2, (xv) 6.375% Non-Cumulative Preferred Stock, Series 3, (xvi) Floating Rate Non-Cumulative Preferred Stock, Series 4, (xvii) Floating Rate Non-Cumulative Preferred Stock, Series 5, (xviii) 6.70% Noncumulative Perpetual Preferred Stock, Series 6, (xix) 6.25% Noncumulative Perpetual Preferred Stock, Series 7, (xx) 8.625% Non-Cumulative Preferred Stock, Series 8, and (xxi) Fixed Rate Cumulative Perpetual Preferred Stock, Series Q.

(f) “Signing Date” means the Original Issue Date.

(g) “UST Preferred Stock” means the Corporation’s Fixed Rate Cumulative Preferred Stock, Series N, and Fixed Rate Cumulative Preferred Stock, Series Q.

Part. 4. Certain Voting Matters. Holders of shares of Designated Preferred Stock will be entitled to one vote for each such share on any matter on which holders of Designated Preferred Stock are entitled to vote, including any action by written consent.

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IN WITNESS WHEREOF, Bank of America Corporation has caused this Certificate of Designations to be signed by Teresa M. Brenner, its Associate General Counsel, this 16<sup>th</sup> day of January, 2009.

BANK OF AMERICA CORPORATION

By: /s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

## STANDARD PROVISIONS

Section 1. General Matters. Each share of Designated Preferred Stock shall be identical in all respects to every other share of Designated Preferred Stock. The Designated Preferred Stock shall be perpetual, subject to the provisions of Section 5 of these Standard Provisions that form a part of the Certificate of Designations. The Designated Preferred Stock shall rank equally with Parity Stock and shall rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Corporation.

Section 2. Standard Definitions. As used herein with respect to Designated Preferred Stock:

(a) "Appropriate Federal Banking Agency" means the "appropriate Federal banking agency" with respect to the Corporation as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

(b) "Business Day" means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

(c) "Bylaws" means the bylaws of the Corporation, as they may be amended from time to time.

(d) "Certificate of Designations" means the Certificate of Designations or comparable instrument relating to the Designated Preferred Stock, of which these Standard Provisions form a part, as it may be amended from time to time.

(e) "Charter" means the Corporation's certificate or articles of incorporation, articles of association, or similar organizational document.

(f) "Dividend Period" has the meaning set forth in Section 3(a).

(g) "Dividend Record Date" has the meaning set forth in Section 3(a).

(h) "Liquidation Preference" has the meaning set forth in Section 4(a).

(i) "Original Issue Date" means the date on which shares of Designated Preferred Stock are first issued.

(j) "Preferred Director" has the meaning set forth in Section 7(b).

(k) "Preferred Stock" means any and all series of preferred stock of the Corporation, including the Designated Preferred Stock.

(l) "Share Dilution Amount" has the meaning set forth in Section 3(b).

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(m) “Standard Provisions” mean these Standard Provisions that form a part of the Certificate of Designations relating to the Designated Preferred Stock.

(n) “Voting Parity Stock” means, with regard to any matter as to which the holders of Designated Preferred Stock are entitled to vote as specified in Sections 7(a) and 7(b) of these Standard Provisions that form a part of the Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

Section 3. Dividends.

(a) Rate. Holders of Designated Preferred Stock shall be entitled to receive, on each share of Designated Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a per annum rate of 8.0% on (i) the Liquidation Amount per share of Designated Preferred Stock and (ii) the amount of accrued and unpaid dividends for any prior Dividend Period on such share of Designated Preferred Stock, if any. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (*i.e.*, no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 20 calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “Dividend Period”, provided that the initial Dividend Period shall be the period from and including the Original Issue Date to, but excluding, the next Dividend Payment Date.

Dividends that are payable on Designated Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on Designated Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Designated Preferred Stock on any Dividend Payment Date will be payable to holders of record of Designated Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of Designated Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Designated Preferred Stock as specified in this Section 3 (subject to the other provisions of the Certificate of Designations).

(b) Priority of Dividends. So long as any share of Designated Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than dividends payable solely in shares of Common Stock) or Parity Stock, subject to the immediately following paragraph in the case of Parity Stock, and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Corporation or any of its subsidiaries unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Designated Preferred Stock on the applicable record date). The foregoing limitation shall not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business (including purchases to offset the Share Dilution Amount (as defined below) pursuant to a publicly announced repurchase plan) and consistent with past practice, provided that any purchases to offset the Share Dilution Amount shall in no event exceed the Share Dilution Amount; (ii) purchases or other acquisitions by a broker-dealer subsidiary of the Corporation solely for the purpose of market-making, stabilization or customer facilitation transactions in Junior Stock or Parity Stock in the ordinary course of its business; (iii) purchases by a broker-dealer subsidiary of the Corporation of capital stock of the Corporation for resale pursuant to an offering by the Corporation of such capital stock underwritten by such broker-dealer subsidiary; (iv) any dividends or distributions of rights or Junior Stock in connection with a stockholders' rights plan or any redemption or repurchase of rights pursuant to any stockholders' rights plan; (v) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians; and (vi) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock. "Share Dilution Amount" means the increase in the number of diluted shares outstanding (determined in accordance with generally accepted accounting principles in the United States, and as measured from the date of the Corporation's consolidated financial statements most recently filed with the Securities and Exchange Commission prior to the Original Issue Date) resulting from the grant, vesting or exercise of equity-based compensation to employees and equitably adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different

from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon Designated Preferred Stock and any shares of Parity Stock, all dividends declared on Designated Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the shares of Designated Preferred Stock (including, if applicable as provided in Section 3(a) above, dividends on such amount) and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other. If the Board of Directors or a duly authorized committee of the Board of Directors determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Corporation will provide written notice to the holders of Designated Preferred Stock prior to such Dividend Payment Date.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Designated Preferred Stock shall not be entitled to participate in any such dividends.

#### Section 4. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Designated Preferred Stock shall be entitled to receive for each share of Designated Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, subject to the rights of any creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to Designated Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (i) the Liquidation Amount per share and (ii) the amount of any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount), whether or not declared, to the date of payment (such amounts collectively, the "Liquidation Preference").

(b) Partial Payment. If in any distribution described in Section 4(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution, holders of Designated Preferred Stock and the

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holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation For purposes of this Section 4, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Designated Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

Section 5. Redemption.

(a) Optional Redemption. The Designated Preferred Stock may not be redeemed prior to the date on which all outstanding shares of UST Preferred Stock have been redeemed, repurchased or otherwise acquired by the Corporation. On or after the date on which all outstanding shares of UST Preferred Stock have been redeemed, repurchased or otherwise acquired by the Corporation, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, out of funds legally available therefor at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption; provided, however, that the Corporation, the holders of a majority of the aggregate Liquidation Amount and the United States Department of the Treasury (if at the time it holds any shares of the Designated Preferred Stock) may in the future discuss alternative consideration for effecting a redemption, including use of Common Stock.

The redemption price for any shares of Designated Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

(b) No Sinking Fund. The Designated Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Designated

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Preferred Stock will have no right to require redemption or repurchase of any shares of Designated Preferred Stock.

(c) Notice of Redemption. Notice of every redemption of shares of Designated Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Designated Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Designated Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(d) Partial Redemption. In case of any redemption of part of the shares of Designated Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Designated Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

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(f) Status of Redeemed Shares. Shares of Designated Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (provided that any such cancelled shares of Designated Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Designated Preferred Stock).

Section 6. Conversion. Holders of Designated Preferred Stock shares shall have no right to exchange or convert such shares into any other securities.

Section 7. Voting Rights.

(a) General. The holders of Designated Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) Preferred Stock Directors. Whenever, at any time or times, dividends payable on the shares of Designated Preferred Stock have not been paid for an aggregate of six quarterly Dividend Periods or more, whether or not consecutive, the authorized number of directors of the Corporation shall automatically be increased by two and the holders of the Designated Preferred Stock shall have the right, with holders of shares of any one or more other classes or series of Voting Parity Stock outstanding at the time, voting together as a class, to elect two directors (hereinafter the "Preferred Directors" and each a "Preferred Director") to fill such newly created directorships at the Corporation's next annual meeting of stockholders (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting of stockholders until all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been declared and paid in full at which time such right shall terminate with respect to the Designated Preferred Stock, except as herein or by law expressly provided, subject to reverting in the event of each and every subsequent default of the character above mentioned; provided that it shall be a qualification for election for any Preferred Director that the election of such Preferred Director shall not cause the Corporation to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Corporation may then be listed or traded that listed or traded companies must have a majority of independent directors. Upon any termination of the right of the holders of shares of Designated Preferred Stock and Voting Parity Stock as a class to vote for directors as provided above, the Preferred Directors shall cease to be qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of Preferred Directors elected pursuant hereto. Any Preferred Director may be removed at any time, with or without cause, and any vacancy created thereby may be filled, only by the affirmative vote of the holders a majority of the shares of Designated Preferred Stock at the time outstanding voting separately as a class together with the holders of shares of Voting Parity Stock, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.



(c) Class Voting Rights as to Particular Matters. So long as any shares of Designated Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least 66 2/3% of the shares of Designated Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior Stock. Any amendment or alteration of the Certificate of Designations for the Designated Preferred Stock or the Charter to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Corporation ranking senior to Designated Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(ii) Amendment of Designated Preferred Stock. Any amendment, alteration or repeal of any provision of the Certificate of Designations for the Designated Preferred Stock or the Charter (including, unless no vote on such merger or consolidation is required by Section 7(c)(iii) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Designated Preferred Stock; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Designated Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Designated Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Designated Preferred Stock immediately prior to such consummation, taken as a whole;

provided, however, that for all purposes of this Section 7(c), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Designated Preferred Stock necessary to satisfy preemptive or similar rights granted by the Corporation to other persons prior to the Signing Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking equally with and/or junior to Designated Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences,

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privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Designated Preferred Stock.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Designated Preferred Stock shall be required pursuant to Section 7(c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of the Designated Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 5 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the holders of Designated Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Charter, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Designated Preferred Stock is listed or traded at the time.

Section 8. Record Holders. To the fullest extent permitted by applicable law, the Corporation and the transfer agent for Designated Preferred Stock may deem and treat the record holder of any share of Designated Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

Section 9. Notices. All notices or communications in respect of Designated Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of Designated Preferred Stock in any manner permitted by such facility.

Section 10. No Preemptive Rights. No share of Designated Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

Section 11. Replacement Certificates. The Corporation shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Corporation.

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Section 12. Other Rights. The shares of Designated Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Charter or as provided by applicable law.

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**CERTIFICATE OF DESIGNATIONS  
OF  
COMMON EQUIVALENT JUNIOR PREFERRED STOCK, SERIES S  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. At meetings duly convened and held on November 16, 2009, November 17, 2009, December 1, 2009 and December 3, 2009, the Board of the Corporation (the "Board") duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's preferred stock, and (b) appointing a Special Securities Committee (the "Committee") of the Board to act on behalf of the Board in establishing the number of authorized shares, the dividend rate and other powers, designations, preferences and rights of the preferred stock.

2. Thereafter, on December 3, 2009, the Committee duly adopted the following resolution by written consent:

**"RESOLVED**, that the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Common Equivalent Junior Preferred Stock, Series S, including those established by the Board and the number of authorized shares and dividend rate established hereby, are authorized and approved as set forth in the Certificate of Designations attached hereto as Exhibit A, which is incorporated herein and made a part of these resolutions by reference."

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its duly authorized officer this 3rd day of December, 2009.

BANK OF AMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

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**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**COMMON EQUIVALENT**  
**JUNIOR PREFERRED STOCK, SERIES S**  
**OF**  
**BANK OF AMERICA CORPORATION**

Pursuant to the authority vested in the Board of Directors (the "Board") by the Amended and Restated Certificate of Incorporation of the Corporation the ("Certificate of Incorporation"), the Board does hereby designate, create, authorize and provide for the issue of a series of preferred stock, \$0.01 par value per share, which shall be designated as Common Equivalent Junior Preferred Stock, Series S (the "Series S Junior Preferred Stock") consisting of 1,286,000 shares having the following voting powers, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions thereof as follows:

**COMMON EQUIVALENT**  
**JUNIOR PREFERRED STOCK, SERIES S**

**Section I. Definitions**

"Adjusted Conversion Rate" means, for each share of Series S Junior Preferred Stock, that number of shares of Common Stock determined by reference to the Initial Conversion Rate (as adjusted pursuant to Section II(d), as applicable) multiplied by an amount equal to one less a fraction, the numerator of which is 200,000,000 and the denominator of which is the Initial Conversion Rate in effect on the Closing Date (without adjustment pursuant to Section II(d)) multiplied by the number of shares of Series S Junior Preferred Stock then outstanding, the amount resulting from such calculation being rounded, if necessary, to the nearest one ten-thousandth, with five one-hundred thousandths rounded upwards.

"Adjusted Liquidation Preference" means, for each share of Series S Junior Preferred Stock, \$12,667.19.

"Amendment" means an Amendment to the Certificate of Incorporation increasing the number of shares of Common Stock the Corporation is authorized to issue from 10 billion to such amount as is authorized by the Board, which amount shall be not less than an amount sufficient to effect conversion of the Series S Junior Preferred Stock in full.

"Applicable Conversion Rate" means the Initial Conversion Rate, unless the Triggering Date has occurred, in which case it shall be the Adjusted Conversion Rate, in each case subject to adjustment pursuant to Section II(d), as applicable, for any such event occurring subsequent to the initial determination of such rate.

"Applicable Liquidation Preference" means the Initial Liquidation Preference unless the Triggering Date has occurred, in which case it shall be the Adjusted Liquidation Preference.

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“As Converted Liquidation Amount” has the meaning specified in Section V(c).

“Board” means the Board of Directors of Bank of America Corporation.

“Certificate of Incorporation” has the meaning specified in the preamble.

“Closing Date” means the date that the Series S Junior Preferred Stock is first issued.

“Common Dividend Equivalent Amount” has the meaning specified in Section III(a).

“Common Stock” means the Common Stock, \$.01 par value per share, of the Corporation.

“Conversion Date” means the first business day following the receipt of Stockholder Approval and the filing and acceptance of the Amendment with the Office of the Secretary of State of the State of Delaware.

“Corporation” means Bank of America Corporation.

“Exchange Property” has the meaning specified in Section VI(a).

“Holder” means the Person in whose name the shares of Series S Junior Preferred Stock are registered, which may be treated by the Corporation as the absolute owner of the shares of Series S Junior Preferred Stock for the purpose of making payment and settling conversion and for all other purposes.

“Initial Conversion Rate” means, for each share of Series S Junior Preferred Stock, 1,000 shares of Common Stock.

“Initial Liquidation Preference” means, for each share of Series S Junior Preferred Stock, \$15,000.

“Junior Preferred Director” has the meaning specified in Section IV(b).

“Liquidation Participation Amount” has the meaning specified in Section V(c).

“Nonpayment” has the meaning specified in Section IV(b).

“Parity Stock” has the meaning specified in Section III(d).

“Person” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company or trust.

“Record Date” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or other applicable security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board or a duly authorized committee of the Board or by statute, contract or otherwise).

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“Reorganization Event” has the meaning specified in Section VI(a).

“Series S Junior Preferred Stock” has the meaning specified in the preamble.

“Special Dividend Payment Date” has the meaning specified in Section III(b).

“Special Dividend Rate” has the meaning specified in Section III(b).

“Special Dividend” has the meaning specified in Section III(b).

“Stockholder Approval” means the requisite approval by the stockholders of the Corporation of the Amendment.

“Triggering Date” means the earlier of (i) the date on which any meeting of the stockholders of the Corporation called for the purpose of obtaining Stockholder Approval is finally adjourned and at which the Amendment is rejected by the Corporation’s stockholders and (ii) the date that is 105 days from the Closing Date.

“Voting Parity Securities” has the meaning specified in Section IV(b).

## **Section II. Automatic Conversion**

(a) Upon the terms and in the manner set forth in this Section II and subject to the provisions for adjustment in Section II(b) below, at 9:30 a.m., New York City time, on the Conversion Date, each share of Series S Junior Preferred Stock will automatically convert into an amount of fully-paid and non-assessable shares of Common Stock, without any action on the part of Holders or the Corporation, based on the Applicable Conversion Rate. The shares of Series S Junior Preferred Stock so converted will be cancelled as described in paragraph (c) below.

(b) If the Corporation fails to obtain Stockholder Approval on or before the Triggering Date, then at 9:30 a.m., New York City time, on the first business day after the Triggering Date, the Series S Junior Preferred Stock shall automatically partially convert into Common Stock, to be effected by the Corporation’s issuance of 200,000,000 shares of Common Stock (as adjusted pursuant to Section II(d)) to the Holders of the Series S Junior Preferred Stock, pro rata based on the number of shares of Series S Junior Preferred Stock held of record by each such Holder on such date, without any action on the part of Holders, and the Applicable Conversion Rate shall thereafter be the Adjusted Conversion Rate. Following the issuance of such Common Stock, all shares of the Series S Junior Preferred Stock will remain outstanding.

(c) As promptly as practicable after the Conversion Date, the Corporation shall (i) provide notice of the conversion to each Holder stating the Conversion Date, the number of shares of Common Stock issued upon conversion of each share of Series S Junior Preferred Stock held of record by such Holder and subject to conversion and the place or places where certificates representing shares of Series S Junior Preferred Stock are to be surrendered for issuance of certificates representing shares of Common Stock and (ii) upon proper surrender (including but not limited to furnishing appropriate endorsements and transfer documents) of such certificates by such Holder, issue and deliver, in exchange for the certificates representing

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the shares of Series S Junior Preferred Stock held by such Holder, to each Holder a certificate or certificates for the number of full shares of Common Stock to which such Holder is entitled. Immediately upon conversion, the rights of the Holders as such with respect to the shares of Series S Junior Preferred Stock so converted shall cease and the persons entitled to receive the shares of Common Stock upon the conversion of such shares of Series S Junior Preferred Stock shall be treated for all purposes as having become the record and beneficial owners of such shares of Common Stock. In the event that a Holder shall not by written notice designate the name in which shares of Common Stock and/or cash, securities or other property (including payments of cash in lieu of fractional shares) to be issued or paid upon conversion of shares of Series S Junior Preferred Stock should be registered or paid or the manner in which such shares should be delivered, the Corporation shall be entitled to register and deliver such shares, and make such payment, in the name of the Holder and in the manner shown on the records of the Corporation.

(d) If at any time prior to the Conversion Date, the Corporation issues to all holders of the Common Stock shares of Common Stock or other securities or assets of the Corporation (other than cash) as a dividend or distribution on the Common Stock, or the Corporation effects a share split or share combination of the Corporation's Common Stock, or the Corporation issues to all holders of the Common Stock certain rights or warrants entitling them for a period of 60 days or less to purchase shares of Common Stock at less than the current market value of the Common Stock at that time, or the Corporation purchases shares of Common Stock pursuant to a tender offer or exchange offer at above the current market value at that time, and in each such case the Record Date with respect to such event (or the date such event is effective, as the case may be) occurs on or after the Closing Date and prior to the Conversion Date (each, an "Adjustment Event"), then the Corporation will make such provision as is necessary so that the Holder receives the same dividend, distribution or other asset or property, if any, as it would have received in connection with such Adjustment Event if it had been the holder on the Record Date (or the date such event is effective, as the case may be) of the number of shares of Common Stock into which the shares of Series S Junior Preferred Stock held by such Holder are then convertible, or, to the extent that it is not reasonably practicable for the Corporation to make such provision, the Corporation shall make such adjustment to the Applicable Conversion Rate or other terms of the Series S Junior Preferred Stock to provide the Holder with an economic benefit comparable to that which it would have received had such provision been made; it being understood that this paragraph (d) shall not apply to the extent that any Holder participates on a pro rata basis with the holders of Common Stock.

(e) No fractional shares of Common Stock or scrip shall be issued upon conversion of shares of Series S Junior Preferred Stock. If more than one share of Series S Junior Preferred Stock shall be surrendered for conversion at any one time by the same Holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series S Junior Preferred Stock so surrendered. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Series S Junior Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest equal to the value of such fractional interest as based on the closing sales price of the Common Stock on the business day immediately preceding the Conversion Date.



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(f) The Corporation shall not be required to reserve or keep available, out of its authorized but unissued Common Stock, or have sufficient authorized Common Stock to cover, the shares of Common Stock deliverable upon the conversion of the Series S Junior Preferred Stock prior to the Stockholder Approval.

(g) All shares of Common Stock which may be issued upon conversion of the shares of Series S Junior Preferred Stock or pursuant to Section II(b) hereof will, upon issuance by the Corporation, be validly issued, fully paid and nonassessable.

(h) Effective immediately prior to the Conversion Date, dividends shall no longer be declared on the shares of Series S Junior Preferred Stock and such shares of Series S Junior Preferred Stock shall cease to be outstanding, in each case, subject to the rights of Holders of such Series S Junior Preferred Stock to receive any declared and unpaid dividends on such shares and any other payments to which they are otherwise entitled pursuant to Section II(d), Section III or Section VI.

### **Section III. Dividend Rights**

(a) From and after the Closing Date to but excluding the Conversion Date, (i) the Holders shall be entitled to receive, when, as and if declared by the Board or any duly authorized committee of the Board, but only out of assets legally available therefor, all cash dividends or distributions (including, but not limited to, regular quarterly dividends) declared and paid or made in respect of the shares of Common Stock, at the same time and on the same terms as holders of Common Stock, in an amount per share of Series S Junior Preferred Stock equal to the product of (i) the Applicable Conversion Rate then in effect and (ii) any per share dividend or distribution, as applicable, declared and paid or made in respect of each share of Common Stock (the "Common Equivalent Dividend Amount"), and (ii) the Board may not declare and pay any such cash dividend or make any such cash distribution in respect of Common Stock unless the Board or any duly authorized committee of the Board declares and pays to the Holders of the Series S Junior Preferred Stock, at the same time and on the same terms as holders of Common Stock, the Common Equivalent Dividend Amount per share. Notwithstanding any provision in this Section III(a) to the contrary, (i) the Holders of the Series S Junior Preferred Stock shall not be entitled to receive any cash dividend or distribution made with respect to the Common Stock after the Closing Date where the Record Date for determination of holders of Common Stock entitled to receive such dividend or distribution occurs prior to the Closing Date, and (ii) to the extent an automatic partial conversion pursuant to Section II(b) has occurred in a calendar quarter, the Common Equivalent Dividend Amount payable, if any, shall be determined as if the Initial Conversion Rate were in effect for the entire calendar quarter, unless the Record Date for payment of any such Common Equivalent Dividend Amount occurs after the issuance of such Common Stock, in which case the Common Equivalent Dividend Amount payable, if any, shall be determined as if the Adjusted Conversion Rate were in effect for the entire calendar quarter.

(b) From and after the date immediately following the Triggering Date to but excluding the Conversion Date, in addition to dividends payable under Section III(a), the Holders of the Series S Junior Preferred Stock shall be entitled to receive, when, as and if declared by the Board or any duly authorized committee of the Board, but only out of assets legally available therefor, non-cumulative cash dividends on the Adjusted Liquidation Preference

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per share of Series S Junior Preferred Stock, payable quarterly in arrears, on each date that regular quarterly cash dividends are paid with respect to the Common Stock or, if no regular quarterly cash dividends are paid with respect to the Common Stock during such calendar quarter, the last Friday of such calendar quarter (or if such Friday is not a business day, the immediately preceding business day) (each, a “Special Dividend Payment Date”). Dividends payable pursuant to this Section III(b) (the “Special Dividend”) will accrue on the Adjusted Liquidation Preference per share of Series S Junior Preferred Stock at a rate per annum equal to the Special Dividend Rate (as defined below) for each calendar quarter from the Triggering Date to the Conversion Date. The amount of Special Dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation will be rounded to the nearest cent, with one-half cent being rounded upward. No interest or sum of money in lieu of interest will be paid with respect to any Special Dividend paid later than the scheduled Special Dividend Payment Date. The “Special Dividend Rate” shall initially be 10% per annum and shall increase by two (2) percentage points on each subsequent Special Dividend Payment Date, subject to a maximum rate of 16% per annum. For purposes of dividends payable pursuant to this Section III(b), the Series S Junior Preferred Stock will rank prior to the Common Stock.

(c) Each dividend or distribution pursuant to (a) or (b) above will be payable to Holders of record of Series S Junior Preferred Stock as they appear in the records of the Corporation at the close of business on the same day as the Record Date for the corresponding dividend or distribution to the holders of shares of Common Stock (or, in the case of a Special Dividend Payment Date where there is no corresponding quarterly cash dividend with respect to the Common Stock during such calendar quarter, the fifteenth day of the calendar month in which the Special Dividend Payment Date falls).

(d) The cash dividends on the Series S Junior Preferred Stock are noncumulative. To the extent that any dividends payable on the shares of Series S Junior Preferred Stock for a calendar quarter are not declared and paid, in full or otherwise, on the applicable dividend payment date, then such unpaid dividends shall not cumulate and shall cease to be payable, and the Corporation shall have no obligation to pay, and the holders of Series S Junior Preferred Stock shall have no right to receive, dividends for such calendar quarter on the related dividend payment date or at any time in the future or interest with respect to such dividends, whether or not dividends are declared for any subsequent calendar quarter or dividend period with respect to Series S Junior Preferred Stock, Parity Stock (as defined below) or any other class or series of authorized preferred stock of the Corporation. So long as any share of the Series S Junior Preferred Stock remains outstanding, (i) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared and made or set aside for payment on any Common Stock (other than a dividend payable solely in shares of Common Stock), (ii) no shares of Common Stock shall be repurchased, redeemed, or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Common Stock for or into other Common Stock, or the exchange or conversion of one share of Common Stock for or into another share of Common Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Common Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Common Stock by the Corporation, and (iii) no shares of Parity Stock will be repurchased, redeemed, or otherwise acquired for consideration by the Corporation otherwise than pursuant to

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pro rata offers to purchase all, or a pro rata portion, of the Series S Junior Preferred Stock and such Parity Stock except by conversion into or exchange for Common Stock, during a dividend period, unless, in each case, the full dividends payable pursuant to Section III(b) for the then-current calendar quarter on all outstanding shares of the Series S Junior Preferred Stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside (except for (w) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of Common Stock, (x) redemptions or purchases of any rights pursuant to a stockholder rights plan or by conversion or exchange of Parity Stock for or into other Parity Stock of the Corporation, (y) purchases by the Corporation or its affiliates as a broker, dealer, advisor, fiduciary, trustee or comparable capacity in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock and (z) acquisitions of Common Stock in respect of exercises of employee equity awards and any related tax withholding and any purchases or acquisitions of Common Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted). Subject to the next succeeding sentence, for so long as any shares of Series S Junior Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends payable pursuant to Section III(b) on all outstanding shares of Series S Preferred Stock for the then-current calendar quarter have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series S Junior Preferred Stock and on any Parity Stock but does not make full payment of such declared dividends, the Corporation will allocate the dividend payments on a pro rata basis among the holders of the shares of Series S Junior Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the allocation of partial dividend payments, the Corporation will allocate dividend payments on a pro rata basis among the Holders of the Series S Junior Preferred Stock and the holders of any Parity Stock so that the amount of dividends paid per share on the Series S Junior Preferred Stock and such Parity Stock shall in all cases bear to each other the same ratio that payable dividends per share on the shares of the Series S Junior Preferred Stock and such Parity Stock (but without, in the case of any noncumulative preferred stock, accumulation of dividends for prior dividend periods) bear to each other. The foregoing right shall not be cumulative and shall not in any way create any claim or right in favor of Holders in the event that dividends have not been declared or paid in respect of any prior calendar quarter. As used herein, "Parity Stock" shall mean each class or series of equity securities of the Corporation issued after the Closing Date (other than Common Stock) that does not by its terms rank senior to the Series S Junior Preferred Stock with respect to payment of dividends or rights upon liquidation, dissolution or winding up of the affairs of the Corporation (including options, warrants or rights to subscribe for or purchase shares of such equity securities).

(e) No interest or sum of money in lieu of interest will be payable in respect of any dividend payment or payments on Series S Junior Preferred Stock or on such Parity Stock that may be in arrears.

(f) Holders of Series S Junior Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Series S Junior Preferred Stock as specified in this Section III.

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Notwithstanding any provision in this Certificate of Designations to the contrary, Holders of the Series S Junior Preferred Stock shall not be entitled to receive any dividends for any calendar quarter in which the Conversion Date occurs, except to the extent that any such dividends have been declared by the Board or any duly authorized committee of the Board and the Record Date for such dividend occurs prior to the Conversion Date.

#### **Section IV. Voting**

(a) Prior to the Conversion Date, Holders are entitled to vote (i) on all matters presented to the holders of Common Stock for approval, voting together with the holders of common stock as one class, as if, on the record date for determining the holders of the Corporation's securities entitled to vote with respect to such matter, the Holders in fact held the shares of Common Stock into which the Series S Junior Preferred Stock are then convertible based on the Applicable Conversion Rate then in effect or (ii) whenever the approval or other action of Holders is required by applicable law or by the Certificate of Incorporation; provided, however that Holders shall not be entitled to vote either together with the Common Stock or as a separate class with respect to the Amendment at any meeting of the stockholders of the Corporation at which the Amendment is presented for approval.

(b) If and whenever any Special Dividend payable to Holders of the Series S Junior Preferred Stock or any other dividend payable to holders of any other class or series of preferred stock ranking equally with Series S Junior Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted by this Section IV have been conferred ("Voting Parity Securities") and are exercisable, have not been declared and paid for the equivalent of at least six or more calendar quarters (other than the calendar quarter in which the Series S Junior Preferred Stock is issued) (whether consecutive or not) (a "Nonpayment"), the number of directors constituting the Board shall be increased by two, and the Holders of the outstanding shares of Series S Junior Preferred Stock voting as a class with holders of any Voting Parity Securities, whether or not the holders of such Voting Parity Securities would be entitled to vote for the election of directors if such Nonpayment did not exist, shall have the right, voting separately as a single class without regard to series, with voting rights allocated pro rata based on liquidation preference, to the exclusion of the holders of Common Stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and provided further that the Board shall at no time include more than two such directors. Each such director elected by the holders of shares of Series S Junior Preferred Stock and any Voting Parity Securities is a "Junior Preferred Director." Any Junior Preferred Director elected by the holders of the Series S Junior Preferred Stock and any Voting Parity Securities may only be removed by the vote of the holders of record of the outstanding Series S Junior Preferred Stock and any such Voting Parity Securities, voting together as a single and separate class, at a meeting of the Corporation's stockholders called for that purpose. Any vacancy created by the removal of any Junior Preferred Director may be filled only by the vote of the holders of the outstanding Series S Junior Preferred Stock and any such Voting Parity Securities, voting together as a single and separate class.

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(c) The election of the Junior Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of the Series S Junior Preferred Stock and any Voting Parity Securities, called as provided herein. At any time after the special voting right has vested pursuant to Section IV(b) above, the secretary of the Corporation may, and upon the written request of any Holder of Series S Junior Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series S Junior Preferred Stock and any Voting Parity Securities, for the election of the two directors to be elected by them as provided in Section IV(d) below. The Junior Preferred Directors shall each be entitled to one vote per director on any matter.

(d) Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any Holder of Series S Junior Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section IV(d), and for that purpose will have access to the stock register of the Corporation. The Junior Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section IV(e). In case any vacancy in the office of a Junior Preferred Director occurs (other than prior to the initial election of the Junior Preferred Directors), the vacancy may be filled by the written consent of the Junior Preferred Director remaining in office, or if none remains in office, by the vote of the Holders of the Series S Junior Preferred Stock (voting together as a single and separate class with holders of any Voting Parity Securities, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such Nonpayment did not exist) to serve until the next annual meeting of the stockholders.

(e) The voting rights described in Section IV(b) above will terminate, except as provided by law, upon the earlier of (A) the conversion of all of the Series S Junior Preferred Stock on the Conversion Date or (B) the payment of full Special Dividends on the Series S Junior Preferred Stock and any Voting Parity Securities, for the equivalent of at least four quarterly periods (but subject to revesting in the case of any similar non-payment of dividends in respect of future dividend periods) following a Nonpayment on the Series S Junior Preferred Stock and any Voting Parity Securities. Upon termination of the special voting right described above, the terms of office of the Junior Preferred Directors will immediately terminate, and the number of directors constituting the Board will be reduced accordingly. Any Junior Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series S Junior Preferred Stock (voting together as a single and separate class with holders of any Voting Parity Securities, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such Nonpayment did not exist).

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## Section V. Liquidation

(a) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation prior to the Conversion Date, whether voluntary or involuntary, Holders of Series S Junior Preferred Stock shall be entitled to receive for each share of Series S Junior Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, subject to the rights of any creditors of the Corporation and the holders of any other stock of the Corporation ranking senior as to such distributions to the Series S Junior Preferred Stock, and before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock or other stock of the Corporation ranking junior to Series S Junior Preferred Stock as to such distribution, a liquidating distribution in an amount equal to the Applicable Liquidation Preference, plus any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation.

(b) If in any distribution described in Section V(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Series S Junior Preferred Stock and the corresponding amounts payable with respect to any other stock of the Corporation ranking equally with Series S Junior Preferred Stock as to such distribution, Holders of Series S Junior Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) If the liquidating distribution provided in Section V(a) above has been paid in full to all Holders of Series S Junior Preferred Stock and the corresponding amounts payable with respect to any other stock of the Corporation ranking equally with Series S Junior Preferred Stock as to such distribution have been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences; provided that if the amount of such assets or proceeds to be distributed with respect to a number of shares of Common Stock equal to the Applicable Conversion Rate then in effect (the "As Converted Liquidation Amount") exceeds the Applicable Liquidation Preference, Holders of Series S Junior Preferred Stock shall be entitled to receive, for each share of Series S Junior Preferred Stock, an additional amount (the "Liquidation Participation Amount") out of such assets or proceeds such that the As-Converted Liquidation Amount equals the sum of the Applicable Liquidation Preference plus the Liquidation Participation Amount, after making appropriate adjustment such that the holders of Series S Junior Preferred Stock receive the same amount on an as-converted basis as the holders of a number of shares of Common Stock equal to the Applicable Conversion Rate then in effect.

(d) For purposes of this Section V, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) or all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

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**Section VI. Adjustments For Reorganization Events**

(a) Upon the occurrence of a Reorganization Event (as defined herein) prior to the Conversion Date, each share of Series S Junior Preferred Stock outstanding immediately prior to such Reorganization Event shall, without the consent of Holders, become convertible into the types and amounts of securities, cash, and other property that is or was receivable in such Reorganization Event by a holder of the number of shares of Common Stock into which such share of Series S Junior Preferred Stock was convertible immediately prior to such Reorganization Event in exchange for such shares of Common Stock (such securities, cash, and other property, the "Exchange Property"). The Holders shall not have any separate class vote on any Reorganization Event. A "Reorganization Event" shall mean:

(i) any consolidation or merger of the Corporation with or into another person, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property of the Corporation or another person;

(ii) any sale, transfer, lease, or conveyance to another person of all or substantially all of the consolidated assets of the Corporation and its subsidiaries, taken as a whole, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property;

(iii) any reclassification of the Common Stock into securities other than the Common Stock; or

(iv) any statutory exchange of the Corporation's securities for those of another person (other than in connection with a merger or acquisition).

(b) In the event that holders of the shares of the Common Stock have the opportunity to elect the form of consideration to be received in such Reorganization Event, the consideration that the Holders are entitled to receive upon conversion shall be deemed to be (i) the types and amounts of consideration received by a majority of the holders of shares of Common Stock that affirmatively make such an election or (ii) if no holders of shares of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by such holders.

(c) The Corporation (or any successor) shall, within 20 days of the occurrence of any Reorganization Event, provide written notice to the Holders of such occurrence of such event and of the type and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section VI.

**Section VII. Reports as to Adjustments**

Whenever the number of shares of Common Stock into which the shares of the Series S Junior Preferred Stock are convertible is adjusted as provided in Section I(e) or Section VI, the Corporation shall promptly compute such adjustment and furnish to the Holders a certificate, signed by the principal financial officer or treasurer of the Corporation, setting forth the number of shares of Common Stock into which each share of the Series S Junior Preferred Stock is

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convertible as a result of such adjustment, a brief statement of the facts requiring such adjustment and the computation thereof and when such adjustment will become effective.

**Section VIII. Exclusion of Other Rights**

Except as may otherwise be required by law, the shares of Series S Junior Preferred Stock shall not have any voting powers, preferences or relative, participating, optional or other special rights, other than those specifically set forth herein (as this Certificate of Designations may be amended from time to time) and in the Certificate of Incorporation. The shares of Series S Junior Preferred Stock shall have no preemptive or subscription rights.

**Section IX. Severability of Provisions**

If any voting powers, preferences or relative, participating, optional or other special rights of the Series S Junior Preferred Stock and qualifications, limitations and restrictions thereof set forth in this Certificate of Designations (as this Certificate of Designations may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series S Junior Preferred Stock and qualifications, limitations and restrictions thereof set forth in this Certificate of Designations (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences or relative, participating, optional or other special rights of Series S Junior Preferred Stock and qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect, and no voting powers, preferences or relative, participating, optional or other special rights of Series S Junior Preferred Stock or qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such voting powers, preferences or relative, participating, optional or other special rights of Series S Junior Preferred Stock or qualifications, limitations and restrictions thereof unless so expressed herein.

**Section X. Reissuance of Series S Junior Preferred Stock**

Shares of Series S Junior Preferred Stock that have been issued and reacquired in any manner, including shares purchased by the Corporation or exchanged or converted, shall (upon compliance with any applicable provisions of the laws of the State of Delaware) have the status of authorized but unissued shares of preferred stock of the Corporation undesignated as to series and may be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Corporation. The Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series S Junior Preferred Stock.

**Section XI. Rank**

Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board or any authorized committee of the Board, without the vote of the Holders of the Series S Junior Preferred Stock, may authorize and issue additional shares of stock ranking junior or senior to, or on parity with, the Series S Junior Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.



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**Section XII. Determinations**

The Corporation shall be solely responsible for making all calculations called for hereunder. Such calculations include, but are not limited to, the calculations under Section I hereof. The Corporation covenants to make all such calculations in good faith. Absent manifest error, such calculations shall be final and binding on all Holders of shares of the Series S Junior Preferred Stock. The Corporation shall have the power to resolve any ambiguity and its action in so doing, as evidenced by a resolution of the Board, shall be final and conclusive unless clearly inconsistent with the intent hereof. Amounts resulting from any calculation will be rounded, if necessary, to the nearest one ten-thousandth, with five one-hundred thousandths being rounded upwards.

**Section XIII. No Redemption**

The Corporation may not, at any time, redeem the outstanding shares of the Series S Junior Preferred Stock.

**Section XIV. Repurchases**

Subject to the limitations imposed herein, the Corporation may purchase and sell shares of Series S Junior Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board or any duly authorized committee of the Board may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section XV. No Sinking Fund**

Shares of Series S Junior Preferred Stock are not subject to the operation of a sinking fund.

**Section XVI. Notices**

All notices, requests and other communications to the Holder of Series S Junior Preferred Stock shall be in writing (including facsimile transmission) and shall be given at the address of such Holder as shown on the books of the Corporation. A Holder of Series S Junior Preferred Stock may waive any notice required hereunder by a writing signed before or after the time required for notice or the action in question. Notice shall be deemed given on the earlier of the date received or three business days after the date such notice is mailed by first-class mail, postage prepaid.

**CERTIFICATE OF AMENDMENT  
TO THE  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
BANK OF AMERICA CORPORATION**

Pursuant to Section 242  
of the General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by changing the number of shares of stock the Corporation is authorized to issue, so that, the first sentence of Article 3 thereof shall read as follows:

“3. The number of shares, par value \$.01 per share, the Corporation is authorized to issue is Eleven Billion Four Hundred Million (11,400,000,000), divided into the following classes:

Class	Number of Shares
Common	11,300,000,000
Preferred	100,000,000.”

2. The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by a duly authorized officer on this 23rd day of February, 2010.

By: /s/ TERESA M. BRENNER  
Name: Teresa M. Brenner  
Title: Associate General Counsel

**FIRST AMENDMENT  
TO THE  
BANK OF AMERICA PENSION RESTORATION PLAN  
(AS AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2009)**

Instrument of Amendment

THIS INSTRUMENT OF AMENDMENT (the "Instrument") is executed this 18<sup>th</sup> day of December, 2009 by BANK OF AMERICA CORPORATION, a Delaware corporation (the "Company").

Statement of Purpose

The Company sponsors the Bank of America Pension Restoration Plan (the "Plan") for the benefit of its eligible employees and the eligible employees of its affiliated companies that participate in the Plan. The provisions of the Plan are currently set forth in an Instrument of the Company dated November 24, 2008, which amended and restated the Plan effective January 1, 2009 (the "2009 Restatement"). By this Instrument, the Company is amending the Plan to (1) reflect relevant changes in the amendment and restatement of The Bank of America Pension Plan, (2) reflect the suspension of awards under the Bank of America Corporation Equity Incentive Plan; and (3) otherwise meet current needs. The Company has reserved the right in Section 4.1 of the Plan to amend the Plan in whole or in part, on its own behalf and on behalf of its affiliated companies that participate in the Plan.

NOW, THEREFORE, the Plan, as set forth in the 2009 Restatement, is hereby amended as follows effective as of January 1, 2009:

1. Section 1.2 of the Plan is hereby amended in its entirety to read as follows:

**"1.2 Applicable Minimum Benefits Provisions**

The minimum monthly benefit amount payable to a Participant in a lump sum as provided in the applicable Basic Plan Specification Schedule."

2. Section 2.2(b)(ii)(A) of the Plan is hereby amended in its entirety to read as follows:

"(A) **Amount A** equals the compensation credit that would have been allocated to the Participant's 'account' under the Basic Plan as of such date if (i) the Code Limitations did not apply to the Basic Plan, (ii) the Participant's 'compensation' under the Basic Plan included the amounts, if any, deferred by the Participant under the Bank of America 401(k) Restoration Plan or any other nonqualified deferred compensation plan designated by

the Global Human Resources Group, (iii) the Participant's 'compensation' under the Basic Plan included the EIP 'principal amount,' if any, of any annual incentive awards earned for performance periods beginning on or after January 1, 2002, and (iv) the Participant's 'compensation' under the Basic Plan included the CMG Plan 'principal amount,' if any, of any annual incentive awards earned for performance periods beginning on or after January 1, 2006; provided, however, that a Participant's compensation taken into account for purposes of determining this Amount A shall not exceed \$250,000 for any Plan Year beginning on or after January 1, 2005 unless the Participant experiences a Termination of Employment during the Plan Year and is rehired within the same Plan Year, in which case the Participant's compensation taken into account for purposes of determining this Amount A may exceed \$250,000 only to the extent necessary to allow such Participant to reach the Code Limitations under the Basic Plan; and"

3. The last sentence in Section 2.2(b)(ii) of the Plan is hereby amended in its entirety to read as follows:

"For purposes of determining Amount A, the EIP principal amount and the CMG Plan principal amount, if any, for a Participant who is in Band 0 shall be the amount communicated to the Global Human Resources Group by the Corporation's Executive Compensation Group as the EIP principal amount and the CMG Plan principal amount, as applicable."

4. The reference to "subsections (a) and (b)" in Section 2.3(d)(ii)(B) of the Plan is hereby amended to read "subsection (b)".

5. Section 2.4(c)(i) of the Plan is hereby amended in its entirety to read as follows:

"(i) **Amount A** equals the lump sum value of the Participant's Basic Plan benefit determined as of the Participant's Delink Calculation Date in accordance with the Applicable Minimum Benefits Provisions of the Basic Plan as if (A) the Code Limitations did not apply to the Basic Plan, (B) the Participant's 'compensation' under the Basic Plan included any amounts which were disregarded because of the Participant's deferral of such amounts pursuant to an election under the Bank of America 401(k) Restoration Plan or any other nonqualified deferred compensation plan designated by the Global Human Resources Group, (iii) the Participant's 'compensation' under the Basic Plan included the EIP 'principal amount,' if any, of any annual incentive awards earned for performance periods beginning on or after January 1, 2002 and (iv) the Participant's 'compensation' under the Basic Plan included the CMG Plan 'principal amount,' if any, of any annual incentive awards earned for performance periods beginning on or after January 1, 2006; provided, however, that a Participant's compensation taken into account for purposes of determining this Amount A shall not exceed \$250,000 for any Plan Year beginning on

or after January 1, 2005 unless the Participant experiences a Termination of Employment during the Plan Year and is rehired within the same Plan Year in which the Termination of Employment occurs, in which case the Participant's compensation taken into account for purposes of determining this Amount A may exceed \$250,000 only to the extent necessary to allow such Participant to reach the Code Limitations under the Basic Plan; and"

6. The reference to "paragraph (i)" in Section 2.4(d)(ii)(C) of the Plan is hereby amended to read "paragraph (i) or (ii) of this subsection, as applicable."

IN WITNESS WHEREOF, the Corporation, on behalf of all of the Participating Employers, has caused this Instrument to be executed by its duly authorized officer as of the day and year first above written.

BANK OF AMERICA CORPORATION

By: /s/ Mark S. Behnke  
Mark S. Behnke  
Global Compensation, Benefits and  
Shared Services Executive

**FIRST AMENDMENT  
TO THE  
BANK OF AMERICA 401(K) RESTORATION PLAN  
(AS AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2009)**

Instrument of Amendment

THIS INSTRUMENT OF AMENDMENT (the "Instrument") is executed this 18<sup>th</sup> day of December, 2009 by BANK OF AMERICA CORPORATION, a Delaware corporation (the "Company").

Statement of Purpose

The Company sponsors the Bank of America 401(k) Restoration Plan (the "Plan") for the benefit of its eligible employees and the eligible employees of its affiliated companies that participate in the Plan. The provisions of the Plan are currently set forth in an Instrument of the Company dated September 3, 2009, which amended and restated the Plan effective January 1, 2009. The Company has reserved the right in Section 4.1 of the Plan to amend the Plan in whole or in part, on its own behalf and on behalf of its affiliated companies that participate in the Plan. By this Instrument, the Company is amending the Plan to reflect the suspension of awards under the Bank of America Corporation Equity Incentive Plan.

NOW, THEREFORE, the Plan is hereby amended as follows effective as of January 1, 2009

1. The last sentence of Section 1.14(b) of the Plan is hereby amended in its entirety to read as follows:

"Eligible Incentive Awards shall not include contest prizes, hiring, retention or employment referral bonuses, one-time bonuses, suggestion program awards, long-term cash awards or any severance or similar benefits."

2. Section 2.4(c) of the Plan is hereby amended in its entirety to read as follows:

"(c) **Matching Contributions for EIP and MFIP Awards:** Under the EIP, a percentage of an eligible Associate's annual incentive award earned for a performance period beginning on or after January 1, 2002 may be made in the form of an award of (i) restricted stock shares or restricted stock units granted under the Bank of America Corporation 2003 Key Associate Stock Plan (or any successor stock plan) or (ii) long-term cash. Similarly, under the MFIP, a percentage of an eligible Associate's annual incentive award earned for a performance period beginning on or after January 1, 2006 may be made in the form of an award of (i) restricted mutual fund

units granted under the MFIP or (ii) long-term cash. The remaining portion of the Associate's annual incentive award may be payable in current cash that is not subject to a vesting schedule. Only the portion of the Associate's annual incentive award payable in current cash, if any, is eligible for deferral under the 401(k) Plan or the Restoration Plan. However, for an Associate covered by the EIP or the MFIP who is eligible to receive matching contributions under the 401(k) Plan at the time when the current cash portion, if any, of such annual incentive award is payable, the Associate's Participating Employer shall credit to the Participant's Matching Contribution Restoration Account an amount equal to 5% of the "Principal Amount" (as defined in the EIP and the MFIP), if any, with respect to such annual incentive award; provided, however, that in no event shall the combined matching contributions under Section 2.4(b), this Section 2.4(c) and the 401(k) Plan for the Plan Year exceed \$12,500. For purposes of this Section, the EIP Principal Amount, if any, for an Associate who is in Band 0 shall be the amount communicated to the Global Human Resources Group by the Corporation's Executive Compensation group as the EIP Principal Amount, if any."

IN WITNESS WHEREOF, the Corporation, on behalf of all of the Participating Employers, has caused this Instrument to be executed by its duly authorized officer as of the day and year first above written.

BANK OF AMERICA CORPORATION

By: /s/ Mark S. Behnke  
Mark S. Behnke  
Global Compensation, Benefits and  
Shared Services Executive

# Bank of America Corporation

## Key Associate Stock Plan Award Agreement

This document contains your Award Agreement under the Bank of America Corporation 2003 Key Associate Stock Plan. A Beneficiary Designation form is also included if you wish to designate a beneficiary or if you wish to change your current beneficiary designation.

### What you need to do

1. Review the Award Agreement to ensure you understand its provisions. With each award you receive, provisions of your Award Agreement may change so it is important to review your Award Agreement.
2. Print the Award Agreement and file it with your important papers.
3. Accept your Award Agreement through the online acceptance process.\*
4. Designate a beneficiary for an award of Restricted Stock Shares or Restricted Stock Units by completing a Beneficiary Designation Form and returning it to the address listed on the form.

\*If you do not accept your Award Agreement through the online acceptance process by November 15, 2008, or such other date that may be communicated, Bank of America will automatically accept the Award Agreement on your behalf.

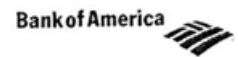
### Summary of Changes to Payment Rules

We are changing the payment rules that apply at termination of employment as required for compliance with Section 409A of the Internal Revenue Code. The new rules apply to this award, all future awards, and any award of Restricted Stock Units you may have received in 2006 or 2007. These materials constitute an amendment to any Restricted Stock Unit Award Agreement you may have received in 2006 or 2007.

**Prior Payment Rules.** If your employment with Bank of America and its Subsidiaries terminated prior to the payment date, depending on the reason for termination, your award may have become fully or partially earned and vested on the date of your termination of employment. To the extent your award was earned and vested, it was paid as soon as practicable thereafter.

**New Payment Rules.** No changes are being made to the rules about whether and to what extent your award becomes earned and vested upon termination of employment. However, to the extent that your award becomes earned and vested upon your termination of employment due to Disability or upon termination by your employer for any reason not constituting Cause, including Workforce Reduction or Divestiture, it will be paid in accordance with the original payment schedule rather than immediately following termination of employment.

**Example.** Assume your employment with Bank of America and its Subsidiaries terminates prior to the payment date of your award due to a Workforce Reduction. The following shows how the Workforce Reduction impacts your award under both the prior payment rules and the new payment rules.





- Prior Payment Rules. Your award becomes immediately earned and vested as of the date of your termination of employment and paid as soon as administratively practicable thereafter.
- New Payment Rules. Your award also becomes immediately earned and vested as of the date of your termination of employment, but payment is made in accordance with the original payment schedule (i.e., on the third anniversary of the award).

As shown in the example, only the timing of payment is being changed. No changes are being made to the rules about whether and to what extent your award becomes earned and vested upon termination of employment.

#### **Summary of Rule of 60 vesting condition**

Below is a summary of the vesting condition for Rule of 60 that applies to eligible associates for awards granted in 2006 or later. You meet the Rule of 60 if your age plus years of vesting service equals 60, with a minimum of 10 years of vesting service and no minimum age. If you do not meet the Rule of 60, this vesting condition does not apply to you.

If your employment ends after you have attained the Rule of 60, to the extent the award does not otherwise vest upon termination, the award will vest in accordance with the original vesting schedule so long as you comply with the Rule of 60 vesting condition, as follows:

- You must not work for a named competitor of Bank of America during the remaining vesting period of your award. On the next page is the current list of named competitors. This list will be updated annually. The list in effect at your termination of employment will control.
- You must annually provide a written certification that you are not working for any of the named competitors. Each December, Bank of America will send to the most recent mailing address you have on record a certification form for you to complete and return. If you do not receive your form by early in the new year, you are responsible for obtaining a certification form by contacting the Bank of America Personnel Center at 1.800.556.6044. You will be considered in breach of the vesting condition if you fail to provide written certification as and when required. It is your sole responsibility to ensure that the company receives your annual certification. Accordingly, you need to keep the company apprised of any changes to your mailing address.

If you comply with these requirements, your award will continue to vest in accordance with the original vesting schedule. However, if you fail to meet either of the above requirements, the unvested portion of your award will be immediately canceled.

#### **For more information**

For more information about your award, review your Award Agreement, which in all events is the controlling document for your award. The most recent list of named competitors appears on NetBenefits in the News and Information section.



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**List of Competitive Businesses (Effective 2008)\***

American Express  
Barclays  
Bear Stearns  
Capital One  
Citigroup  
Credit Suisse Group  
Deutsche Bank  
Fidelity  
GE Capital  
GMAC Financial  
Goldman Sachs  
HSBC  
JPMorgan Chase  
Lehman Brothers  
Merrill Lynch  
Morgan Stanley  
Royal Bank of Scotland  
UBS  
US Bancorp  
Wachovia  
Washington Mutual  
Wells Fargo

\* Includes any subsidiaries and affiliates of the listed entities





**2003 KEY ASSOCIATE STOCK PLAN  
RESTRICTED STOCK UNITS AWARD AGREEMENT**

GRANTED TO	GRANT DATE	NUMBER OF RESTRICTED STOCK UNITS
<u>Note:</u> The number of Restricted Stock Units is based on a "divisor price" of \$42.65, which is the five-day average closing price of Bank of America Corporation common stock for the five business days immediately preceding and including February 15, 2008.		

This Restricted Stock Units Award Agreement and all Exhibits hereto (the "Agreement") is made between Bank of America Corporation, a Delaware corporation ("Bank of America"), and you, an associate of Bank of America or one of its Subsidiaries.

Bank of America sponsors the Bank of America Corporation 2003 Key Associate Stock Plan (the "Stock Plan"). A Prospectus describing the Stock Plan has been delivered to you. The Stock Plan itself is available upon request, and its terms and provisions are incorporated herein by reference. When used herein, the terms which are defined in the Stock Plan shall have the meanings given to them in the Stock Plan, as modified herein (if applicable).

The Restricted Stock Units covered by this Agreement are being awarded to you as a result of your participation in the Bank of America Corporation Equity Incentive Plan (the "EIP"), subject to the following terms and provisions:

1. Subject to the terms and conditions of the Stock Plan, the EIP (collectively, the "Plans") and this Agreement, Bank of America awards to you the number of Restricted Stock Units shown above. Each Restricted Stock Unit shall have a value equal to the Fair Market Value of one (1) share of Bank of America common stock.
2. You acknowledge having read the Prospectus and agree to be bound by all the terms and conditions of the Plans and this Agreement.
3. If a cash dividend is paid with respect to Bank of America common stock, a cash dividend equivalent equal to the total cash dividend you would have received had your Restricted Stock Units been actual shares of Bank of America common stock will be accumulated and paid in cash through payroll when the Restricted Stock Units become earned and payable. Dividend equivalents are credited with interest at the three-year constant maturity Treasury rate in effect on the date of grant until the payment date.
4. The Restricted Stock Units covered by this Award shall become earned by, and payable to, you in the amounts and on the dates shown on the enclosed Exhibit A.
5. You agree that you shall comply with (or provide adequate assurance as to future compliance with) all applicable securities laws and income tax laws as determined by Bank of America as a condition precedent to the delivery of any shares of Bank of America common stock pursuant to

this Agreement. In addition, you agree that, upon request, you will furnish a letter agreement providing that (i) you will not distribute or resell any of said shares in violation of the Securities Act of 1933, as amended, (ii) you will indemnify and hold Bank of America harmless against all liability for any such violation and (iii) you will accept all liability for any such violation.

6. By executing and returning a Beneficiary Designation Form, you may designate a beneficiary to receive payment in connection with the Restricted Stock Units awarded hereunder in the event of your death while in service with Bank of America. If you do not designate a beneficiary or if your designated beneficiary does not survive you, then your beneficiary will be your estate. A Beneficiary Designation Form has been included in your Award package and may also be obtained by contacting Executive Compensation as described in the Prospectus.
7. The existence of this Award shall not affect in any way the right or power of Bank of America or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations or other changes in Bank of America's capital structure or its business, or any merger or consolidation of Bank of America, or any issue of bonds, debentures, preferred or prior preference stocks ahead of or convertible into, or otherwise affecting the Bank of America common stock or the rights thereof, or the dissolution or liquidation of Bank of America, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.
8. Bank of America may, in its sole discretion, decide to deliver any documents related to this grant or future Awards that may be granted under the Plans by electronic means or request your consent to participate in the Plans by electronic means. You hereby consent to receive such documents by electronic delivery and, if requested, agree to participate in the Plans through an on-line or electronic system established and maintained by Bank of America or another third party designated by Bank of America.

Any notice which either party hereto may be required or permitted to give to the other shall be in writing and may be delivered personally, by intraoffice mail, by fax, by electronic mail or other electronic means, or via a postal service, postage prepaid, to such electronic mail or postal address and directed to such person as Bank of America may notify you from time to time; and to you at your electronic mail or postal address as shown on the records of Bank of America from time to time, or at such other electronic mail or postal address as you, by notice to Bank of America, may designate in writing from time to time.

9. Regardless of any action Bank of America or your employer takes with respect to any or all income tax, payroll tax or other tax-related withholding ("Tax-Related Items"), you acknowledge that the ultimate liability for all Tax-Related items owed by you is and remains your responsibility and that Bank of America and/or your employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the grant of Restricted Stock Units, including the grant and vesting the Restricted Stock Units, the subsequent sale of Shares acquired upon the vesting of the Restricted Stock Units and the receipt of any dividends; and (ii) do not commit to structure the terms of the grant or any aspect of the Restricted Stock Units to reduce or eliminate your liability for Tax-Related Items.

In the event Bank of America determines that it and/or your employer must withhold any Tax-Related Items as a result of your participation in the Plans, you agree as a condition of the grant of the Restricted Stock Units to make arrangements satisfactory to Bank of America and/or your employer to enable it to satisfy all withholding requirements, including, but not limited to, withholding any applicable Tax-Related Items from the pay-out of the Restricted Stock Units. In

addition, you authorize Bank of America and/or your employer to fulfill its withholding obligations by all legal means, including, but not limited to: withholding Tax-Related Items from your wages, salary or other cash compensation your employer pays to you; withholding Tax-Related Items from the cash proceeds, if any, received upon sale of any Shares received in payment for your Restricted Stock Units; and at the time of payment, withholding Shares sufficient to meet minimum withholding obligations for Tax-Related Items. Bank of America may refuse to issue and deliver Shares in payment of any earned Restricted Stock Units if you fail to comply with any withholding obligation.

10. The validity, construction and effect of this Agreement are governed by, and subject to, the laws of the State of Delaware and the laws of the United States, as provided in the Plans. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of North Carolina and agree that such litigation shall be conducted solely in the courts of Mecklenburg County, North Carolina or the federal courts for the United States for the Western District of North Carolina, where this grant is made and/or to be performed, and no other courts.
11. In the event any provision of this Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Agreement, and the Agreement shall be construed and enforced as if the illegal or invalid provision had not been included. This Agreement constitutes the final understanding between you and Bank of America regarding the Restricted Stock Units. Any prior agreements, commitments or negotiations concerning the Restricted Stock Units are superseded. Subject to the terms of the Stock Plan, this Agreement may only be amended by a written instrument signed by both parties.

IN WITNESS WHEREOF, Bank of America has caused this Agreement to be executed by its duly authorized officer, and you have hereunto set your hand, all effective as of the Grant Date listed above.

BANK OF AMERICA CORPORATION

ASSOCIATE

BY: /s/ Kenneth D. Lewis

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Chairman, Chief Executive Officer and President

2008 US EIP RSU 08EIPCDU (3-year cliff)

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

## PAYMENT OF RESTRICTED STOCK UNITS

- (a) PAYMENT SCHEDULE. Subject to the provisions of paragraphs (b), (c) and (d) below, the Restricted Stock Units shall become earned and payable on the third anniversary of the Grant Date if you remain employed with Bank of America and its Subsidiaries through that date. Shares will be issued as soon as administratively practicable, generally within 15 days after the payment date.
- (b) IMPACT OF TERMINATION OF EMPLOYMENT ON EARNING OF RESTRICTED STOCK UNITS. If your employment with Bank of America and its Subsidiaries terminates prior to the above payment date, then any unearned Restricted Stock Units shall become earned or be canceled depending on the reason for termination as follows:
- (i) Death, Disability, or Termination by Bank of America due to Workforce Reduction or Divestiture Any unearned Restricted Stock Units shall become immediately earned as of the date of your termination of employment if your termination is due to (A) death, (B) Disability, (C) Workforce Reduction or (D) Divestiture.
  - (ii) Termination by Bank of America Without Cause. If your employment is terminated by your employer without Cause (not including Workforce Reduction or Divestiture), then any unearned Restricted Stock Units shall become immediately earned as of such date.
  - (iii) Termination by Bank of America With Cause. If your employment is terminated by your employer with Cause, then any unearned Restricted Stock Units shall be immediately canceled as of your employment termination date.
  - (iv) Termination by You. If you voluntarily terminate your employment prior to attaining the Rule of 60, then any unearned Restricted Stock Units shall be immediately canceled as of your employment termination date.
- (c) PAYMENT OF EARNED RESTRICTED STOCK UNITS FOLLOWING TERMINATION OF EMPLOYMENT. Except in the case of your termination of employment due to death, to the extent that your Restricted Stock Units become earned as described in paragraph (b), they shall become payable at such time as provided in the Payment Schedule described in paragraph (a) (without regard to whether you are employed by Bank of America and its Subsidiaries). To the extent that your Restricted Stock Units become earned as a result of termination of employment due to your death, they shall become immediately payable as of the date of your termination. Shares will be issued as soon as administratively practicable, generally within 15 days after the payment date. Any accumulated cash dividend equivalents described in Section 3 of the Agreement will also be paid at this time.
- (d) RULE OF 60. If you voluntarily terminate your employment having attained the Rule of 60, then any unearned Restricted Stock Units shall continue to become earned and payable in accordance with the schedule set forth in paragraph (a) above, provided that (A) you do not engage in Competition during such period and (B) prior to each of the first, second and third anniversary of the Grant Date, you provide Bank of America with a written certification that you have not engaged in Competition. To be effective, such certification must be provided on such form, at such time and pursuant to such procedures as Bank of America shall establish from time to time. If Bank of America determines in its reasonable business judgment that you have failed to satisfy either of the foregoing requirements, then any unearned

Restricted Stock Units shall be immediately canceled as of the date of such determination. In addition, from time to time following your termination of employment after having attained the Rule of 60, Bank of America may require you to further certify that you are not engaging in Competition, and if you fail to fully cooperate with any such requirement Bank of America may determine that you are engaging in Competition.

(e) FORM OF PAYMENT. Payment of Restricted Stock Units shall be payable in the form of one share of common stock for each Restricted Stock Unit that is payable.

(f) DEFINITIONS. For purposes hereof, the following terms shall have the following meanings:

Cause shall be defined as that term is defined in your offer letter or other applicable employment agreement; or, if there is no such definition, "Cause" means a termination of your employment with Bank of America and its Subsidiaries if it occurs in conjunction with a determination by your employer that you have (i) committed an act of fraud or dishonesty in the course of your employment; (ii) been convicted of (or plead no contest with respect to) a crime constituting a felony; (iii) failed to perform your job function(s), which Bank of America views as being material to your position and the overall business of Bank of America and its Subsidiaries under circumstances where such failure is detrimental to Bank of America or any Subsidiary; (iv) materially breached any written policy applicable to associates of Bank of America and its Subsidiaries including, but not limited to, the Bank of America Corporation Code of Ethics and General Policy on Insider Trading; or (v) made an unauthorized disclosure of any confidential or proprietary information of Bank of America or its Subsidiaries or have committed any other material violation of Bank of America's written policy regarding Confidential and Proprietary Information.

Competition means your being engaged, directly or indirectly, whether as a director, officer, employee, consultant, agent, or otherwise, with a business entity that is designated as a "Competitive Business" as of the date of your termination of employment. Bank of America shall communicate such list to you.

Divestiture means a termination of your employment with Bank of America and its Subsidiaries as the result of a divestiture or sale of a business unit as determined by your employer based on the personnel records of Bank of America and its Subsidiaries.

Rule of 60 means, as of the date of your termination of employment with Bank of America and its Subsidiaries, you have (i) completed at least ten (10) years of "Vesting Service" under the tax-qualified Pension Plan sponsored by Bank of America in which you participate and (ii) attained a combined age and years of "Vesting Service" equal to at least sixty (60).

Workforce Reduction means your termination of employment with Bank of America and its Subsidiaries as a result of a labor force reduction, realignment or similar measure as determined by the your employer and (i) you receive severance pay under the Corporate Severance Program (or any successor program) upon termination of employment, or (ii) if not eligible to receive such severance pay, you are notified in writing by an authorized officer of Bank of America or any Subsidiary that the termination is as a result of such action. Your termination of employment shall not be considered due to Workforce Reduction unless you have first executed all documents required under the Corporate Severance Program or otherwise, including without limitation any required release of claims.

**Bank of America Corporation  
MANAGEMENT PLANS**

Beneficiary Designation Form

Please complete this form if you wish to designate a beneficiary for your Shares of Restricted Stock or Restricted Stock Units granted under the Bank of America Corporation 2003 Key Associate Stock Plan (the "Stock Plan") or if you wish to change your current beneficiary designation. Completed forms should be returned to Fidelity Investments, P.O. Box 770001, Cincinnati, Ohio 45277-0030.

\*\*\*\*\*

With respect to any of my awards of Restricted Stock or Restricted Stock Units under the Stock Plan that are outstanding and become payable at the time of my death, I hereby designate the following person or entity as my beneficiary to receive any payments in connection with those awards in the event of my death.

Designation of Primary Beneficiary. I designate the following as my Primary Beneficiary(ies):

Name of Beneficiary	Birthdate	Address	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Designation of Secondary Beneficiary. I designate the following as my Secondary Beneficiary(ies):

Name of Beneficiary	Birthdate	Address	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Selection of Rule for Deceased Beneficiary. Select either Rule 1 or Rule 2 below by marking with an "X". The rule selected shall be applied to Primary Beneficiaries and Secondary Beneficiaries separately so that no Secondary Beneficiary (or issue of a Secondary Beneficiary) shall be entitled to a share of the death benefits unless all Primary Beneficiaries fail to survive the Participant and, if Rule 2 is selected, all issue of all Primary Beneficiaries fail to survive the Participant.

- Rule 1. The death benefits shall be paid in equal shares to those named Beneficiaries (either Primary or Secondary, as applicable) who survive me.
- Rule 2. The death benefits shall be paid in equal shares to those named Beneficiaries (either Primary or Secondary, as applicable) who survive me and to the surviving issue collectively of each named Beneficiary (either Primary or Secondary, as applicable) who does not survive me but who leaves issue surviving me, with the equal share for such surviving issue of such deceased named Beneficiary to be divided among and paid to such issue on a per stirpes basis. ("Issue" means lineal descendants and includes adopted persons.)

I understand that I may change this designation at any time by executing a new form and delivering it to Fidelity Investments. This designation supercedes any prior beneficiary designation made by me with respect to awards of Restricted Stock or Restricted Stock Units granted under the Stock Plan.

Signature of Participant \_\_\_\_\_ Date: \_\_\_\_\_

Name of Participant (please print): \_\_\_\_\_

Participant's Person Number: \_\_\_\_\_





# Bank of America Corporation

## Key Associate Stock Plan Award Agreement

This document contains your Award Agreement under the Bank of America Corporation 2003 Key Associate Stock Plan.

### What you need to do

1. Review the Award Agreement to ensure you understand its provisions. With each award you receive, provisions of your Award Agreement may change so it is important to review your Award Agreement.
2. Print the Award Agreement and file it with your important papers.
3. Accept your Award Agreement through the online acceptance process.

### Summary of Rule of 60 vesting condition

Below is a summary of the vesting condition for Rule of 60 that applies to eligible associates for awards granted in 2006 or later. You meet the Rule of 60 if your age plus years of vesting service equals 60, with a minimum of 10 years of vesting service and no minimum age. If you do not meet the Rule of 60, this vesting condition does not apply to you.

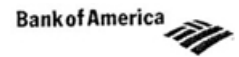
If your employment ends after you have attained the Rule of 60, to the extent the award does not otherwise vest upon termination, the award will vest in accordance with the original vesting schedule so long as you comply with the Rule of 60 vesting condition, as follows:

- You must not work for a named competitor of Bank of America during the remaining vesting period of your award. On the next page is the current list of named competitors. This list will be updated annually. The list in effect at your termination of employment will control.
- You must annually provide a written certification that you are not working for any of the named competitors. Each December, Bank of America will send to the most recent mailing address you have on record a certification form for you to complete and return. If you do not receive your form by early in the new year, you are responsible for obtaining a certification form by contacting the Bank of America Personnel Center at 1.800.556.6044. You will be considered in breach of the vesting condition if you fail to provide written certification as and when required. It is your sole responsibility to ensure that the company receives your annual certification. Accordingly, you need to keep the company apprised of any changes to your mailing address.

If you comply with these requirements, your award will continue to vest in accordance with the original vesting schedule, and Stock Options will remain exercisable for the full option term. However, if you fail to meet either of the above requirements, the unvested portion of your award will be immediately canceled. Also, any vested but unexercised Stock Options will be immediately canceled and will no longer be exercisable (with certain limited exceptions).

### For more information

For more information about your award, review your Award Agreement, which in all events is the controlling document for your award. The most recent list of named competitors appears on NetBenefits in the News and Information section.



2008 U.S. Stk. Opt. 08C3YH  
(3-year hold)  
Page 1 of 11

**List of Competitive Businesses (Effective 2008)\***

American Express  
Barclays  
Bear Stearns  
Capital One  
Citigroup  
Credit Suisse Group  
Deutsche Bank  
Fidelity  
GE Capital  
GMAC Financial  
Goldman Sachs  
HSBC  
JPMorgan Chase  
Lehman Brothers  
Merrill Lynch  
Morgan Stanley  
Royal Bank of Scotland  
UBS  
US Bancorp  
Wachovia  
Washington Mutual  
Wells Fargo

\* Includes any subsidiaries and affiliates of the listed entities



**2003 KEY ASSOCIATE STOCK PLAN  
STOCK OPTION AWARD AGREEMENT**

GRANTED TO	GRANT DATE	EXPIRATION DATE	NUMBER OF SHARES	OPTION PRICE PER SHARE

This Stock Option Award Agreement and all Exhibits hereto (the "Agreement") is made between Bank of America Corporation, a Delaware corporation ("Bank of America"), and you, an associate of Bank of America or one of its Subsidiaries.

Bank of America sponsors the Bank of America Corporation 2003 Key Associate Stock Plan (the "Stock Plan"). A Prospectus describing the Stock Plan has been delivered to you. The Stock Plan itself is available upon request, and its terms and provisions are incorporated herein by reference. When used herein, the terms which are defined in the Stock Plan shall have the meanings given to them in the Stock Plan, as modified herein (if applicable).

You and Bank of America mutually covenant and agree as follows:

1. Subject to the terms and conditions of the Stock Plan and this Agreement, Bank of America grants to you the option (the "Option") to purchase from Bank of America the above-stated number of Shares of Bank of America Common Stock at the Option Price per share stated above. This Option is not intended to be an Incentive Stock Option. You acknowledge having read the Prospectus and agree to be bound by all of the terms and conditions of the Stock Plan and this Agreement.
2. This Option vests and is exercisable by you as described on Exhibit A attached hereto and incorporated herein by reference. The manner of exercising the Option and the method for paying the applicable Option Price shall be as set forth in the Stock Plan. Any applicable withholding taxes must also be paid by you in accordance with the Stock Plan. Shares issued upon exercise of the Option shall be issued solely in your name. The right to purchase Shares pursuant to the Option shall be cumulative so that when the right to purchase additional Shares has vested pursuant to the schedule on Exhibit A, such Shares or any part thereof may be purchased thereafter until the expiration of the Option.
3. In the event of your termination of employment with Bank of America and its Subsidiaries and subject to the provisions of this paragraph 3 and Exhibit A, this Option shall expire on the earlier of the Expiration Date stated above or the following cancellation date depending on the reason for termination:

Reason for Termination

Cancellation Date

Death or Disability	12 months from termination date
Workforce Reduction or Divestiture	12 months from termination date
Cause	termination date
Rule of 60	Expiration Date (as stated above)*
All Other Terminations	90 days from termination date

\* Note: Subject to compliance with the Rule of 60 vesting conditions set forth on Exhibit A.

The reasons for termination are as defined on Exhibit A. For purposes of this Agreement, your employment termination date will be determined by Bank of America based on the personnel records of Bank of America and its Subsidiaries and will be prior to your commencement of any period of severance pay, if applicable.

4. The Option may not be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. If the Option is exercisable following your death, the Option shall be exercisable by such person empowered to do so under your will, or if you fail to make a testamentary disposition of the Option or shall have died intestate, by your executor or other legal representative.
5. "Net Profit Shares" (as defined below) acquired upon exercise of the Option must be held by you until the earlier of (i) the third anniversary of the exercise date or (ii) the date of your termination of employment with Bank of America and its Subsidiaries, other than termination of employment for "Cause," as defined in Exhibit A. This period is referred to as the "Three-Year Hold Requirement". Any attempt to sell, transfer, pledge, assign or otherwise alienate or hypothecate Net Profit Shares prior to completion of such period shall be null and void. For purposes hereof, "Net Profit Shares" means those Shares determined by the Global Human Resources Group representing the total number of Shares remaining after taking into account the following costs related to exercise: (i) the aggregate Option Price with respect to the exercise; (ii) the amount of all applicable taxes with respect to the exercise, assuming your maximum applicable federal, state and local tax rates for such purpose; and (iii) any transaction costs. The Global Human Resources Group will determine the number of Net Profit Shares for any particular exercise. Notwithstanding anything in this paragraph 5 to the contrary, the Three-Year Hold Requirement shall not apply if at any time the Global Human Resources Group determines, in its sole discretion, that the Three-Year Hold Requirement that the Three-Year Hold Requirement prevents you from exercising the Option or otherwise imposes an undue burden on you, your employer or Bank of America in connection with the exercise of the Option.
6. If your employment with Bank of America and its Subsidiaries is terminated for Cause, any Net Profit Shares held by you on the date of termination that have not yet become transferable in accordance with paragraph 5 above shall be immediately canceled. In that case, (i) your right to vote and to receive cash dividends on, and all other rights, title or interest in, to or with respect to, such canceled Net Profit Shares shall automatically, without further act, terminate and (ii) such canceled Net Profit Shares shall be returned to Bank of America. You hereby irrevocably appoint (which appointment is coupled with an interest) Bank of America as your agent and attorney-in-fact to take any necessary or appropriate action to cause such canceled Net Profit Shares to be returned to Bank of America, including without limitation executing and delivering stock powers and instruments of transfer, making endorsements and/or making, initiating or issuing instructions or entitlement orders, all in your name and on your behalf. You hereby ratify and approve all acts

done by Bank of America as such attorney-in-fact. Without limiting the foregoing, you expressly acknowledge and agree that any transfer agent for such canceled Net Profit Shares is fully authorized and protected in relying on, and shall incur no liability in acting on, any documents, instruments, endorsements, instructions, orders or communications from Bank of America in connection with such canceled Net Profit Shares or the transfer thereof, and that any such transfer agent is a third party beneficiary of this Agreement.

7. You acknowledge that, as of the Grant Date of this Award, Fidelity Brokerage Services LLC, National Financial Services LLC and their affiliated companies (collectively, "Fidelity") have been engaged by Bank of America to provide recordkeeping, administrative and brokerage services to participants in the Stock Plan. In that regard, so long as Fidelity remains engaged by Bank of America to provide those services, the Net Profit Shares shall be held in a brokerage account administered by Fidelity during the period of non-transferability described in paragraph 5 above. **BY ENTERING INTO THIS AGREEMENT, YOU ARE ALSO HEREBY ENTERING INTO THE INSTRUCTION LETTER WITH FIDELITY IN THE FORM ATTACHED HERETO AS EXHIBIT B**, pursuant to which you authorize Fidelity to follow any duly authorized instructions of Bank of America regarding the cancellation of Net Profit Shares in accordance with paragraph 6 above. Fidelity shall be a third party beneficiary of this Agreement for purposes of relying on the provisions of this paragraph 7.
8. You agree that, upon request, you will furnish a letter agreement providing (i) that you will not distribute or resell in violation of the Securities Act of 1933, as amended, any of the Shares acquired upon your exercise of the Option, (ii) that you indemnify and hold Bank of America harmless against all liability for any such violation and (iii) that you will accept all liability for any such violation.
9. The existence of this Option shall not affect in any way the right or power of Bank of America or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations or other changes in Bank of America's capital structure or its business, or any merger or consolidation of Bank of America, or any issue of bonds, debentures, preferred or prior preference stocks ahead of or convertible into, or otherwise affecting the Common Stock or the rights thereof, or the dissolution or liquidation of Bank of America, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.
10. Bank of America may, in its sole discretion, decide to deliver any documents related to this Option grant or future Awards that may be granted under the Stock Plan by electronic means or request your consent to participate in the Stock Plan by electronic means. You hereby consent to receive such documents by electronic delivery and, if requested, agree to participate in the Stock Plan through an on-line or electronic system established and maintained by Bank of America or another third party designated by Bank of America.  

Any notice which either party hereto may be required or permitted to give to the other shall be in writing and may be delivered personally, by intraoffice mail, by fax, by electronic mail or other electronic means, or via a postal service, postage prepaid, to such electronic mail or postal address and directed to such person as Bank of America may notify you from time to time; and to you at your electronic mail or postal address as shown on the records of Bank of America from time to time, or at such other electronic mail or postal address as you, by notice to Bank of America, may designate in writing from time to time.
11. Regardless of any action Bank of America or your employer takes with respect to any or all income tax, payroll tax or other tax-related withholding ("Tax-Related Items"), you acknowledge that the ultimate liability for all Tax-Related Items owed by you is and remains your responsibility and that Bank of America and/or your employer (i) make no representations or

undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Option grant, including the grant, vesting or exercise of the Option, the subsequent sale of Shares acquired pursuant to such exercise and the receipt of any dividends; and (ii) do not commit to structure the terms of the grant or any aspect of the Option to reduce or eliminate your liability for Tax-Related Items.

Prior to exercise of the Option, you shall pay or make adequate arrangements satisfactory to Bank of America and/or your employer to satisfy all withholding obligations of Bank of America and/or your employer. In this regard, you authorize Bank of America and/or your employer to withhold all applicable Tax-Related Items legally payable by you from your wages or other cash compensation paid to you by Bank of America and/or your employer or from proceeds of the sale of the Shares. Alternatively, or in addition, to the extent permissible under applicable law, Bank of America may (i) sell or arrange for the sale of Shares that you acquire to meet the withholding obligation for Tax-Related Items, and/or (ii) withhold in Shares, provided that Bank of America only withholds the amount of Shares necessary to satisfy the minimum withholding amount. Finally, you shall pay to Bank of America or your employer any amount of Tax-Related Items that Bank of America or your employer may be required to withhold as a result of your participation in the Stock Plan or your purchase of Shares that cannot be satisfied by the means previously described. Bank of America may refuse to honor the exercise and refuse to deliver the Shares if you fail to comply with your obligations in connection with the Tax-Related Items as described in this paragraph 11.

12. The validity, construction and effect of this Agreement are governed by, and subject to, the laws of the State of Delaware and the laws of the United States, as provided in the Stock Plan. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of North Carolina and agree that such litigation shall be conducted solely in the courts of Mecklenburg County, North Carolina or the federal courts for the United States for the Western District of North Carolina, where this grant is made and/or to be performed, and no other courts.
13. In the event any provision of this Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Agreement, and the Agreement shall be construed and enforced as if the illegal or invalid provision had not been included. This Agreement constitutes the final understanding between you and Bank of America regarding the Option. Any prior agreements, commitments or negotiations concerning the Option are superseded. Subject to the terms of the Stock Plan, this Agreement may only be amended by a written instrument signed by both parties.

IN WITNESS WHEREOF, Bank of America has caused this Agreement to be executed by its duly authorized officer, and you have hereunto set your hand, all effective as of the Grant Date listed above.

BANK OF AMERICA CORPORATION

ASSOCIATE

By: /s/ Kenneth D. Lewis

Chairman, Chief Executive Officer and President

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

VESTING OF STOCK OPTION AWARD

(a) VESTING SCHEDULE. Subject to the provisions of paragraph (b) below, the Option shall vest and become exercisable on the third anniversary of the Grant Date if you remain employed with Bank of America and its Subsidiaries through that date.

(b) EFFECT OF TERMINATION OF EMPLOYMENT ON VESTING. The termination of your employment with Bank of America and its Subsidiaries before the vesting date in paragraph (a) above shall affect the vesting of the Option depending on the reason for termination as follows:

Death, Disability, Workforce Reduction or Divestiture To the extent the Option was not already vested pursuant to paragraph (a) above, the Option shall become fully (100%) vested as of the date of your death, Disability, or termination of employment due to Workforce Reduction or Divestiture. If you satisfied the Rule of 60 as of the date of your termination of employment due to your death or Disability, then notwithstanding the provisions of paragraph 3 of the Agreement to the contrary, the Option will remain exercisable until the Expiration Date of the Option.

Cause: The Option shall immediately terminate and be canceled as of the date of termination of employment, even if it had previously vested to any extent pursuant paragraph (a) above prior to termination of employment.

Rule of 60: If your employment terminates for any reason other than death, Disability or Cause after you have attained the Rule of 60, then, after applying the vesting rules applicable to termination due to Workforce Reduction or Divestiture as set forth above in this paragraph (b) (if applicable), any unvested Options shall continue to become vested and exercisable in accordance with the schedule set forth in paragraph (a) above, provided that (A) you do not engage in Competition during such period and (B) prior to each of the first, second and third anniversary of the Grant Date, you provide Bank of America with a written certification that you have not engaged in Competition. To be effective, such certification must be provided on such form, at such time and pursuant to such procedures as Bank of America shall establish from time to time. If Bank of America determines in its reasonable business judgment that you have failed to satisfy either of the foregoing requirements, then:

- (A) any unvested Options shall be immediately canceled as of the date of such determination; and
- (B) any vested Options shall cease to be exercisable as of the later of (i) the date of such determination or (ii) the applicable Cancellation Date under paragraph 3 of the Agreement that would have applied if you had not attained the Rule of 60.

In addition, from time to time following your termination of employment after having attained the Rule of 60, Bank of America may require you to further certify that you are not engaging in Competition, and if you fail to fully cooperate with any such requirement Bank of America may determine that you are engaging in Competition.

All Other Terminations: Any portion of the Option that was not already vested pursuant to paragraph (a) above as of the date of termination of employment shall terminate and be canceled as of such date.

The Option, to the extent vested as provided by this paragraph (b), shall remain exercisable following termination of employment pursuant to the provisions of paragraph 3 of the Agreement.

(c) DEFINED TERMS. For purposes of this Exhibit A and the Agreement, the following terms shall have the following meanings:

All Other Terminations means any termination of your employment with Bank of America and its Subsidiaries prior to your having attained the Rule of 60, whether initiated by you or your employer, other than a termination due to your death or Disability and other than a termination which constitutes Workforce Reduction, Divestiture or Cause.

Cause shall be defined as that term is defined in your offer letter or other applicable employment agreement; or, if there is no such definition, "Cause" means a termination of your employment with Bank of America and its Subsidiaries if it occurs in conjunction with a determination by your employer that you have (i) committed an act of fraud or dishonesty in the course of your employment; (ii) been convicted of (or plead no contest with respect to) a crime constituting a felony; (iii) failed to perform your job function(s), which Bank of America views as being material to your position and the overall business of Bank of America and its Subsidiaries under circumstances where such failure is detrimental to Bank of America or any Subsidiary; (iv) materially breached any written policy applicable to associates of Bank of America and its Subsidiaries including, but not limited to, the Bank of America Corporation Code of Ethics and General Policy on Insider Trading; or (v) made an unauthorized disclosure of any confidential or proprietary information of Bank of America or its Subsidiaries or have committed any other material violation of Bank of America's written policy regarding Confidential and Proprietary Information.

Competition means your being engaged, directly or indirectly, whether as a director, officer, employee, consultant, agent, or otherwise, with a business entity that is designated as a "Competitive Business" as of the date of your termination of employment. Bank of America shall communicate such list to you.

Disability is as defined in the Stock Plan.

Divestiture means a termination of your employment with Bank of America and its Subsidiaries as the result of a divestiture or sale of a business unit as determined by your employer based on the personnel records of Bank of America and its Subsidiaries.



Rule of 60 means, as of the date of your termination of employment with Bank of America and its Subsidiaries, you have (i) completed at least ten (10) years of “Vesting Service” under the tax-qualified Pension Plan sponsored by Bank of America in which you participate and (ii) attained a combined age and years of “Vesting Service” equal to at least sixty (60).

Workforce Reduction means your termination of employment with Bank of America and its Subsidiaries as a result of a labor force reduction, realignment or similar measure as determined by your employer and (i) you receive severance pay under the Corporate Severance Program (or any successor program) upon termination of employment, or (ii) if not eligible to receive such severance pay, you are notified in writing by an authorized officer of Bank of America or any Subsidiary that the termination is as a result of such action. Your termination of employment shall not be considered due to Workforce Reduction unless you have first executed all documents required under the Corporate Severance Program or otherwise, including without limitation any required release of claims.

Fidelity Brokerage Services LLC  
National Financial Services LLC  
82 Devonshire Street, Mailzone L3B  
Boston, MA 02109

Re: Brokerage Account at Fidelity Brokerage Services LLC  
Registered in the name of (NAME] (the "Account")

Ladies and Gentlemen:

This letter sets forth my instructions to Fidelity Brokerage Services LLC and National Financial Services LLC (collectively, "Fidelity") regarding shares of the Common Stock of Bank of America Corporation (the "Issuer") acquired by me under the Bank of America Corporation 2003 Key Associate Stock Plan ("Stock Plan") and held in the Account (the "Shares"). For purposes of this letter, the Shares include any shares of Issuer acquired pursuant to the stock options granted to me under the Stock Plan in February 2008 or any prior years that are subject to the hold requirement.

1. I am a participant in the Stock Plan, an equity compensation plan of the Issuer whereby I have been granted options to acquire shares of the Common Stock of the Issuer.
2. I am familiar with the terms of the Stock Plan and applicable grant agreement ("Controlling Documents") with respect to the Shares. I will not give any instructions to Fidelity regarding the Shares that are not permitted under the Controlling Documents.
3. Upon exercise of my option rights, I may from time to time acquire Shares that will be deposited in my Account.
4. Under the Controlling Documents, the Shares are subject to return to the Issuer under certain circumstances set forth in the Controlling Documents until a date set forth in the Controlling Documents (the "Restrictions Lapse Date").
5. With respect to Shares I hereby instruct Fidelity to restrict my ability to sell, exchange, transfer, pledge or otherwise enter into transactions with respect to the Shares prior to the Restrictions Lapse Date.
6. Fidelity may follow any instructions or orders with respect to the Shares given by the Issuer or by a person designated by the Issuer to act on behalf of the Issuer with respect to the Shares (an "Authorized Person"), or a person Fidelity reasonably believes to be an Authorized Person, including without limitation any instructions regarding the Restrictions Lapse Date and the cancellation, surrender or other transfer of the Shares to the Issuer ("Issuer Instructions").
7. Fidelity shall be under no obligation to verify the validity of any Issuer Instructions under the Controlling Documents or Issuer's authority to give any Issuer Instructions.
8. This letter does not create any obligation of Fidelity except for those expressly set forth herein. Fidelity shall have no liability to me for any act or omission by Fidelity or any of its employees or representatives, taken or omitted in accordance with such Issuer Instructions. In particular, Fidelity need not investigate whether Issuer is entitled under the Controlling Documents to give Issuer Instructions.

9. I agree to indemnify, defend, and hold harmless Fidelity, its affiliates, and their respective successors, officers, directors, employees and assigns, from and against any and all actions, causes of action, claims, demands, costs, liabilities, expenses (including attorneys' fees and disbursements) and damages arising out of or in connection with any act or omission of Fidelity taken in good faith in reliance on the instructions set forth herein or any instruction from me or any Authorized Person.
10. Fidelity may provide information to the Issuer or any Authorized Person with respect to the Account and the Shares.
11. These instructions shall continue in effect with respect to Shares until the earlier to occur of (a) the Restrictions Lapse Date or (b) receipt by Fidelity of written notice by an Authorized Person instructing Fidelity to accelerate the Restrictions Lapse Date.
12. Fidelity may cease to follow the instructions and undertaking set forth in this letter by delivering thirty days prior written notice (a) to me and (b) to the Issuer or an Authorized Person.

Sincerely,

\_\_\_\_\_  
[NAME]

Account Owner

**RETIREMENT INCOME ASSURANCE PLAN FOR LEGACY FLEET  
(AS AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2009)**

**RETIREMENT INCOME ASSURANCE PLAN FOR LEGACY FLEET  
(AS AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2009)**

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**RETIREMENT INCOME ASSURANCE PLAN FOR LEGACY FLEET  
(AS AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2009)**

THIS INSTRUMENT OF AMENDMENT AND RESTATEMENT is executed by BANK OF AMERICA CORPORATION, a Delaware corporation (the "Corporation");

Statement of Purpose

The Corporation sponsors the Retirement Income Assurance Plan for Legacy Fleet (the "Plan"). The purpose of the Plan is to provide benefits, on a non-qualified and unfunded basis, to certain associates whose benefits under The Bank of America Pension Plan for Legacy Fleet, a component document of The Bank of America Pension Plan for Legacy Companies (the "Basic Plan"), are adversely affected by the limitations of Sections 401(a)(17) and 415 of the Internal Revenue Code, as well as any other limitations that may be placed on highly compensated participants under such plans.

The Corporation is amending and restating the Plan effective January 1, 2009 as set forth herein to (i) reflect relevant changes in the amendment and restatement of the Basic Plan and (ii) otherwise meet current needs.

NOW, THEREFORE, for the purposes aforesaid, the Corporation hereby amends and restates the Plan effective January 1, 2009 to consist of the following Articles I through VII:

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**ARTICLE I**  
**DEFINITIONS**

Unless defined herein, any word, phrase or term used in the Plan shall have the meaning given to it in the Basic Plan. However, the following terms have the following meanings unless a different meaning is clearly required by the context:

**1.1 Basic Plan**

The Bank of America Pension Plan for Legacy Fleet, a component document of The Bank of America Pension Plan for Legacy Companies, as amended and in effect from time to time.

**1.2 Beneficiary**

The "beneficiary" of a Participant under the Basic Plan unless the Participant elects a different Beneficiary for purposes of the Plan in accordance with such procedures as the Global Human Resources Group may establish from time to time. If there is no Beneficiary election in effect under the Basic Plan or the Plan at the time of a Participant's death, or if the designated Beneficiary fails to survive the Participant, then the Beneficiary shall be the Participant's surviving spouse, or if there is no surviving spouse, the Participant's estate.

**1.3 Benefit Commencement Date**

The date that a Participant's Pre-2005 Benefit and/or Post-2004 Benefit, as applicable, is paid or begins to be paid.

**1.4 Cash Balance Participant**

A Participant who is a Cash Balance Participant under the Basic Plan and whose benefits under the Basic Plan are limited by Section 415 or 401(a)(17) of the Code.

**1.5 Code**

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

**1.6 Committee**

The Bank of America Corporate Benefits Committee.

**1.7 Company**

Bank of America Corporation, a Delaware corporation, and any successor thereto.



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**1.8 Delink Calculation Date**

The date determined by the Global Human Resources Group that is no more than 75 days after the Participant's Termination of Employment.

**1.9 Global Human Resources Group**

The Global Human Resources Group of the Company.

**1.10 Participant**

- (a) A Cash Balance Participant; and
- (b) A Traditional Participant.

**1.11 Participating Employer**

The Company, each subsidiary or affiliate that adopts and participates in the Plan and each successor corporation that continues the Plan.

**1.12 Plan**

The Retirement Income Assurance Plan for Legacy Fleet as in effect from time to time.

**1.13 Plan Year**

The 12-month period commencing January 1 and ending the following December 31.

**1.14 Post-2004 Benefit**

- (a) For a Cash Balance Participant, the Post-2004 Cash Balance Benefit; and
- (b) For a Traditional Participant, the Post-2004 Traditional Benefit.

**1.15 Post-2004 Cash Balance Benefit**

The benefit payable under the Plan to a Cash Balance Participant (or the Cash Balance Participant's Beneficiary) with respect to amounts that become earned or vested after December 31, 2004, determined as of the Cash Balance Participant's Benefit Commencement Date in accordance with Section 3.4.

**1.16 Post-2004 Traditional Benefit**

The benefit payable under the Plan to a Traditional Participant (or the Traditional Participant's Beneficiary) with respect to amounts that become earned or vested after December 31, 2004, determined as of the Traditional Participant's Benefit Commencement Date in accordance with Section 3.2.

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**1.17 Pre-2005 Benefit**

- (a) For a Cash Balance Participant, the Pre-2005 Cash Balance Benefit; and
- (b) For a Traditional Participant, the Pre-2005 Traditional Benefit.

**1.18 Pre-2005 Cash Balance Benefit**

The benefit payable under the Plan to a Cash Balance Participant (or the Cash Balance Participant's Beneficiary) with respect to amounts earned and vested as of December 31, 2004, determined as of the Cash Balance Participant's Benefit Commencement Date in accordance with Section 3.3.

**1.19 Pre-2005 Traditional Benefit**

The benefit payable under the Plan to a Traditional Participant (or the Traditional Participant's Beneficiary) with respect to amounts earned and vested as of December 31, 2004, determined as of the Traditional Participant's Benefit Commencement Date in accordance with Section 3.1.

**1.20 Termination of Employment**

For purposes of the Plan whether a "Termination of Employment" has occurred shall be determined consistent with the requirements of Section 409A of the Code and the Bank of America 409A Policy to the extent applicable.

**1.21 Traditional Participant**

A Participant who is a Traditional Participant under the Basic Plan and whose benefits under the Basic Plan are limited by Section 415 or 401(a)(17) of the Code.

**1.22 Vesting Service**

Vesting Service as defined under the Basic Plan.

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**ARTICLE II**  
**SOURCE OF BENEFIT PAYMENTS**

**2.1 Obligation of Company**

The Company will establish on its books a liability with respect to its obligation for benefits payable under the Plan to Participants (and their Beneficiaries). Each Participant and Beneficiary will be an unsecured general creditor of the Company with respect to all benefits payable under the Plan.

**2.2 No Funding Required**

Nothing in the Plan will be construed to obligate the Company to fund the Plan. However, the Company may but shall not be required to establish a trust of which the Company is treated as the owner under Subpart E of Subchapter J, Chapter 1 of the Code (a “grantor trust”) and may deposit funds with the trustee of the trust sufficient to satisfy the benefits provided under the Plan. If the Company establishes such a grantor trust and, if at the time of a “change of control” as defined in the trust, the trust has not been fully funded, the Company shall, within the time and manner specified under such trust, deposit in such trust amounts sufficient to satisfy all obligations under the Plan as of the date of deposit. In all events the Company shall remain ultimately liable for the benefits payable under the Plan, and, to the extent the assets at the disposal of the trustee are insufficient to enable the trustee to satisfy all benefits, the Company shall pay all such benefits necessary to meet its obligations under the Plan.

**2.3 No Claim to Specific Benefits**

Nothing in the Plan will be construed to give any individual rights to any specific assets of the Company, or any other person or entity.

**ARTICLE III**  
**BENEFITS**

**3.1 Pre-2005 Traditional Benefit**

- (a) **Amount of Pre-2005 Traditional Benefit:** The amount of the Pre-2005 Traditional Benefit payable under the Plan to a Traditional Participant (or to the Traditional Participant's Beneficiary, in the event of the Traditional Participant's death) is the Traditional Participant's accrued benefit as of December 31, 2004 determined in accordance with subsection (b) of this Section, valued as a single life annuity at the Traditional Participant's Benefit Commencement Date using Basic Plan assumptions in effect at the Traditional Participant's Delink Calculation Date.
- (b) **Traditional Participant's Accrued Benefit as of December 31, 2004:** A Traditional Participant's accrued benefit as of December 31, 2004 is equal to Amount A minus Amount B, assuming benefits commence on January 1, 2005 as a single life annuity and based on the Traditional Participant's Vesting Service through December 31, 2004 and age as of January 1, 2005, where:
  - (i) **Amount A** is the amount of the accrued benefit the Traditional Participant (or Beneficiary) would have been entitled to receive under the Basic Plan as of December 31, 2004 if "earnings" under the Basic Plan included deferrals of base pay, commissions or non-discretionary incentive pay made under the Bank of America 401(k) Restoration Plan; provided, however, that if the limits of Section 1.16(c)(i) of the Basic Plan apply to the Traditional Participant, such deferrals will be taken into account under this Section only to the extent the deferrals, when added to the commissions, non-discretionary incentive pay and actual base pay previously counted under the Basic Plan in the same year, do not exceed the limit described in Section 1.16(c)(i) of the Basic Plan, and the limitations of Sections 401(a)(17) and 415 of the Code (and the provisions of the Basic Plan applying those limitations) did not exist; and
  - (ii) **Amount B** is the amount of the accrued benefit payable to the Traditional Participant (or Beneficiary) under the Basic Plan as of December 31, 2004.

**3.2 Post-2004 Traditional Benefit**

- (a) **Amount of Post-2004 Traditional Benefit:** The amount of the Post-2004 Traditional Benefit payable under the Plan to a Traditional Participant (or to the Traditional Participant's Beneficiary, in the event of the Traditional Participant's death) is the difference between (i) the lump sum value of the total accrued benefit payable to the Traditional Participant at the Traditional Participant's Delink Calculation Date determined in accordance with subsection (b) of this

Section and (ii) the lump sum value of the Traditional Participant's accrued benefit as of December 31, 2004 (determined in accordance with Section 3.1(b)) as of the first day of the month on or after the Traditional Participant's Delink Calculation Date using the Basic Plan assumptions in effect on the first day of the month on or after the Traditional Participant's Delink Calculation Date (but not less than zero). The Post-2004 Traditional Benefit is valued as of the Traditional Participant's Benefit Commencement Date using Basic Plan assumptions.

- (b) **Lump Sum Value of Total Accrued Benefit:** The lump sum value of the total accrued benefit payable under the Plan to a Traditional Participant (or to the Traditional Participant's Beneficiary, in the event of the Traditional Participant's death) at the Traditional Participant's Delink Calculation Date is equal to Amount A minus Amount B, assuming that benefits commence as of the first day of the month on or after the Traditional Participant's Delink Calculation Date as a single life annuity and based on the Traditional Participant's Vesting Service and age as of the Traditional Participant's Delink Calculation Date, valued as a lump sum using the Basic Plan assumptions in effect on the first day of the month on or after the Traditional Participant's Delink Calculation Date where:
- (i) **Amount A** is the amount of the accrued benefit the Traditional Participant (or Beneficiary) would have been entitled to receive under the Basic Plan as of the first day of the month on or after the Traditional Participant's Delink Calculation Date if "earnings" under the Basic Plan included deferrals of base pay, commissions or non-discretionary incentive pay made under the Bank of America 401(k) Restoration Plan; provided, however, that if the limits of Section 1.16(c)(i) of the Basic Plan apply to the Traditional Participant, such deferrals will be taken into account under this Section 3.2(b) only to the extent the deferrals, when added to the commissions, non-discretionary incentive pay and actual base pay previously counted under the Basic Plan in the same year, do not exceed the limit described in Section 1.16(c)(i) of the Basic Plan, and the limitations of Sections 401(a)(17) and 415 of the Code (and the provisions of the Basic Plan applying those limitations) did not exist; and
- (ii) **Amount B** is the amount of the accrued benefit payable to the Traditional Participant (or Beneficiary) under the Basic Plan as of the first day of the month on or after the Traditional Participant's Delink Calculation Date.

### 3.3 Pre-2005 Cash Balance Benefit

- (a) **Amount of Pre-2005 Cash Balance Benefit:** The amount of the Pre-2005 Cash Balance Benefit payable under the Plan to a Cash Balance Participant (or to the Cash Balance Participant's Beneficiary, in the event of the Cash Balance Participant's death) is the Cash Balance Participant's account balance as of December 31, 2004 determined in accordance with subsection (b) of this Section, increased with interest credits from December 31, 2004 to the Benefit Commencement Date using the Basic Plan's interest crediting rates.

- (b) **Pre-2005 Account Balance at December 31, 2004:** The Cash Balance Participant's pre-2005 account balance at December 31, 2004 is determined as Amount A minus Amount B, based on the Basic Plan assumptions and the Cash Balance Participant's Vesting Service and age as of December 31, 2004 where:
- (i) **Amount A** is the amount of the benefit the Cash Balance Participant (or Beneficiary) would have been entitled to receive under the Basic Plan as of December 31, 2004 (expressed as a lump sum if not otherwise a lump sum) if "earnings" under the Basic Plan included deferrals of base pay, commissions or non-discretionary incentive pay made under the Bank of America 401(k) Restoration Plan; provided, however, that if the limits of Section 1.16(c)(i) of the Basic Plan apply to the Cash Balance Participant, such deferrals will be taken into account under this Section only to the extent the deferrals, when added to the commissions, non-discretionary incentive pay and actual base pay previously counted under the Basic Plan in the same year, do not exceed the limit described in Section 1.16(c)(i) of the Basic Plan, and "earnings" under the Basic Plan were not limited by Section 401(a)(17) of the Code, and the limitations of Section 415 of the Code (and provisions of the Basic Plan applying those limitations) did not exist; and
  - (ii) **Amount B** is the amount of the benefit payable to the Cash Balance Participant (or Beneficiary) under the Basic Plan as of December 31, 2004 (expressed as a lump sum if not otherwise a lump sum).

#### 3.4 Post-2004 Cash Balance Benefit

- (a) **Amount of Post-2004 Cash Balance Benefit:** The amount of the Post-2004 Cash Balance Benefit payable under the Plan to a Cash Balance Participant (or to the Cash Balance Participant's Beneficiary, in the event of the Cash Balance Participant's death) is the difference between (i) the Cash Balance Participant's total account balance at the Cash Balance Participant's Delink Calculation Date determined in accordance with subsection (b) of this Section and (ii) the Cash Balance Participant's pre-2005 account balance at December 31, 2004 (determined in accordance with Section 3.3(b)), increased with interest from December 31, 2004 to the Delink Calculation Date (but not less than zero). The Post-2004 Cash Balance Benefit is increased with interest credits from the Cash Balance Participant's Delink Calculation Date to the last business day immediately preceding complete distribution of the Post-2004 Cash Balance Benefit using the Basic Plan's interest crediting rates.
- (b) **Total Account Balance at Delink Calculation Date:** The total account balance at Delink Calculation Date is determined as Amount A minus Amount B, based on the Basic Plan assumptions and the Cash Balance Participant's Vesting Service and age as of the Delink Calculation Date where:

- (i) **Amount A** is the amount of the benefit the Cash Balance Participant (or Beneficiary) would have been entitled to receive under the Basic Plan as of the Cash Balance Participant's Delink Calculation Date (expressed as a lump sum if not otherwise a lump sum) if "earnings" under the Basic Plan included deferrals of base pay, commissions or non-discretionary incentive pay made under the Bank of America 401(k) Restoration Plan; provided, however, that if the limits of Section 1.16(c)(i) of the Basic Plan apply to the Cash Balance Participant, such deferrals will be taken into account under this subsection only to the extent the deferrals, when added to the commissions, non-discretionary incentive pay and actual base pay previously counted under the Basic Plan in the same year, do not exceed the limit described in Section 1.16(c)(i) of the Basic Plan, and "earnings" under the Basic Plan were not limited by Section 401(a)(17) of the Code but were limited to an annual maximum of \$250,000, and the limitations of Section 415 of the Code (and provisions of the Basic Plan applying those limitations) did not exist; and
- (ii) **Amount B** is the benefit payable to the Cash Balance Participant (or Beneficiary) under the Basic Plan as of the Cash Balance Participant's Delink Calculation Date (expressed as a lump sum if not otherwise a lump sum).

Notwithstanding anything in this subsection to the contrary, if a Cash Balance Participant experiences a Termination of Employment during the Plan Year and is rehired within the same Plan Year, such Cash Balance Participant's "earnings" for the Plan Year may exceed \$250,000 only to the extent necessary to allow such Cash Balance Participant to reach the Section 401(a)(17) of the Code limit in the Basic Plan.

### 3.5 Payment of Pre-2005 Benefits to Participants

- (a) **Payment of Pre-2005 Traditional Benefits to Traditional Participants:** The Pre-2005 Traditional Benefit payable under the Plan to or in respect of a Traditional Participant shall be paid in the same form, commence at the same time, and be paid under the same terms and conditions as the benefits paid to the Traditional Participant under the Basic Plan. Such Traditional Participant's benefit payment election under the Basic Plan shall be treated as the Traditional Participant's benefit payment election under the Plan with respect to Pre-2005 Traditional Benefit.
- (b) **Payment of Pre-2005 Cash Balance Benefits to Cash Balance Participants:**
  - (i) A Cash Balance Participant shall separately elect the form and timing of the Cash Balance Participant's Pre-2005 Cash Balance Benefit under the Plan and benefits under the Basic Plan. Such election under the Plan, or change in any prior election, shall be made on a form approved by the Global Human Resources Group. An election under this subsection is not

treated as effective unless filed with the Global Human Resources Group at least one year before the Cash Balance Participant's Termination of Employment, except that a Cash Balance Participant may file an election, which will be treated as effective, before the Cash Balance Participant's Termination of Employment if (A) the election substitutes one form of annuity distribution for another form of annuity distribution that had been timely elected and (B) such later-elected form is the form of distribution that the Cash Balance Participant elects under the Basic Plan.

- (ii) A Cash Balance Participant who does not have a valid, timely election in effect for the Pre-2005 Cash Balance Benefit on the day before such Cash Balance Participant's Termination of Employment shall have the Pre-2005 Cash Balance Benefit promptly paid out in a lump sum following Termination of Employment.
  - (iii) Notwithstanding the foregoing provisions of this Section, if the value of a Cash Balance Participant's Pre-2005 Cash Balance Benefit under the Plan at the time of Termination of Employment is \$10,000 or less, the Cash Balance Participant's Pre-2005 Cash Balance Benefit shall be paid out in a lump sum as soon as administratively practicable following Termination of Employment.
- (c) **Death Benefits:** In the event of the death of the Participant, Pre-2005 Benefits under the Plan will become payable to the Participant's Beneficiary, under the same terms and conditions specified in the Basic Plan.

### **3.6 Payment of Post-2004 Benefits to Participants with a Post-2004 Benefit on August 28, 2006**

- (a) **2006 One-Time Payment Election:** Subject to the provisions of Section 3.8, each Participant with a Post-2004 Benefit on August 28, 2006 had an opportunity during 2006 to make a one-time payment election applicable to such Participant's Post-2004 Benefit. Each such Participant was able to elect from among the available payment methods set forth in subsection (b) of this Section, and such election was effective as of January 1, 2007. Absent such a payment election, the Participant's Post-2004 Benefit will be paid in a single lump sum during the first 90 days of the calendar year following the Participant's Termination of Employment unless the Participant subsequently changes the payment election as provided in subsection (c) of this Section.
- (b) **Available Payment Methods:** Subject to the provisions of Section 3.8, effective January 1, 2007, for the payment of Post-2004 Benefits, a Participant's vested Post-2004 Benefit shall be paid in a single lump sum during the first 90 days of the calendar year following the Participant's Termination of Employment unless the Participant elects to receive payment of such Participant's vested Post-2004 Benefit in one of the following forms:



- 
- (i) **Lump Sum Payment in Specified Year:** A single lump sum during the first 90 days of the later of (A) the calendar year following the Participant's Termination of Employment and (B) the calendar year elected by the Participant (but no later than the calendar year in which the Participant reaches age 75).
  - (ii) **Annual Installments Commencing following Termination of Employment:** Annual installment payments over a period of years elected by the Participant not to exceed 10 commencing during the first 90 days of the calendar year following the Participant's Termination of Employment.
  - (iii) **Annual Installments Commencing in Specified Year:** Annual installment payments over a period of years elected by the Participant not to exceed 10 commencing during the first 90 days of the later of (A) the calendar year following the Participant's Termination of Employment and (B) the calendar year elected by the Participant (but not later than the calendar year in which the Participant reaches age 75).
- (c) **Subsequent Changes to Payment Elections:** A Participant may change the timing or form of payment applicable under subsection (b) of this Section, or the timing or form of payment subsequently elected under this subsection, with respect to the Post-2004 Benefit only if (i) such election is made at least 12 months prior to January 1 of the Plan Year in which the payment of the vested Post-2004 Benefit would have otherwise been made or commenced and (ii) the effect of such election is to defer such payment by at least 5 years; provided, however, that no election to change the timing or form of payment may be made if the date the payment of the vested Post-2004 Benefit would have otherwise been made or commenced is less than 5 years from the calendar year in which the Participant would have attained age 75. In the event that a Participant's election made pursuant to this subsection does not comply with the requirements of this subsection, such election shall be void and the timing and form of payment in effect at the time of such voided election governs.
- (d) **Timing and Amount of Annual Installments:** Subject to the provisions of Section 3.8, for a vested Post-2004 Benefit payable as annual installments under subsection (b)(ii) or (b)(iii) of this Section, the first installment shall be paid during the first 90 days of the calendar year following the Participant's Termination of Employment or the calendar year elected by the Participant, as applicable, and each subsequent installment shall be paid during the first 90 days of each subsequent calendar year during the elected payment period. The amount of each installment payment shall equal the Post-2004 Benefit as of the last business day immediately preceding the applicable payment date divided by the number of remaining installments (including the installment then payable).

**3.7 Payment of Post-2004 Benefits to New Participants after August 28, 2006**

- (a) **Timing and Form of Payment:** Subject to the provisions of subsection (b) of this Section and Section 3.8, the vested Post-2004 Benefit of a Participant who first becomes a Participant after August 28, 2006 shall be payable during the first 90 days of the calendar year following the Plan Year in which the Participant's Termination of Employment occurs in a single lump sum payment.
- (b) **Subsequent Changes to Timing of Payment:** A Participant may change the timing (but not the form) of payment provided under subsection (a) of this Section, or the timing (but not the form) of payment subsequently elected under this subsection, with respect to the Post-2004 Benefit only if (i) such election is made at least 12 months prior to January 1 of the Plan Year in which the payment of the Post-2004 Benefit would have otherwise been made and (ii) the effect of such election is to defer such payment by at least 5 years; provided, however, that no election to change the timing of payment may be made if the date the payment of the Post-2004 Benefit would have otherwise commenced is less than 5 years from the calendar year in which the Participant would have attained age 75. In the event that a Participant's election made pursuant to this subsection does not comply with the requirements of this subsection, such election shall be void and the timing of payment in effect at the time of such voided election governs.

**3.8 General Payment Provisions for Post-2004 Benefits**

- (a) **Payments of Post-2004 Benefits to Participants Who Terminate Employment Prior to January 1, 2007:**
  - (i) **Traditional Participants:** Payments of the Post-2004 Traditional Benefit to any Traditional Participant whose Termination of Employment occurs prior to January 1, 2007 and who has an Annuity Starting Date under the Basic Plan prior to January 1, 2007 shall be made in accordance with the provisions of Section 3.5(a) of the Plan at the same time and in the same form as if such Post-2004 Traditional Benefit were a Pre-2005 Traditional Benefit.
  - (ii) **Cash Balance Participants:** Payments of the Post-2004 Cash Balance Benefit to any Cash Balance Participant whose Termination of Employment occurs prior to January 1, 2007 shall be made in accordance with the provisions of Section 3.5(b) at the same time and in the same form as if such Post-2004 Cash Balance Benefit were a Pre-2005 Cash Balance Benefit.
- (b) **Automatic Lump Sum Payment for Cash Balance Participants:** Notwithstanding any provision in the Plan to the contrary, but subject to the provisions of subsection (d) of this Section, if applicable, a Cash Balance Participant's Post-2004 Benefit shall be payable in a single cash payment during the first 90 days of the calendar year following the Participant's Termination of

Employment if the sum of the Pre-2005 Cash Balance Benefit and the Post-2004 Cash Balance Benefit determined at the Delink Calculation Date is \$10,000 or less, or the Participant is vested but has less than 5 years of Vesting Service.

- (c) **Death of a Participant:** If a Participant dies before having been paid the Participant's entire Post-2004 Benefit (including a Participant receiving installment payments), the remaining unpaid balance of the Post-2004 Benefit shall be payable to the Participant's Beneficiary in a single cash payment within 90 days following the end of the Plan Year in which the Participant dies; provided, however, that if the Global Human Resources Group is not provided with sufficient advance notice of the Participant's death to pay the Post-2004 Benefit within 90 days following the Plan Year in which the Participant dies, then payment shall be made within 90 days after the end of the Plan Year in which such notice of death is received by the Global Human Resources Group.
- (d) **Special Provisions for "Specified Employees":** Notwithstanding any provision in the Plan to the contrary, to the extent applicable, in no event shall any payment hereunder be made to a "specified employee" within the meaning of Section 409A of the Code earlier than 6 months after the date of the Participant's Termination of Employment, except in connection with the Participant's death. If a specified employee's Termination of Employment occurs before July 1 of a Plan Year, the earliest date that the specified employee's Post-2004 Benefit shall be paid is during the first 90 days of the calendar year following the Participant's Termination of Employment. If a specified employee's Termination of Employment occurs on or after July 1 in a calendar year, the earliest date that the specified employee's Post-2004 Benefit shall be paid is during the first 90 days of the second calendar year following the Participant's Termination of Employment.

### 3.9 Vesting

If a Participant or Beneficiary is not entitled to receive a benefit under the Basic Plan because the benefit is not vested, the Participant or Beneficiary shall also not be entitled to receive benefits under the Plan.

### 3.10 Other Payment Provisions

To be effective, any elections under this Article shall be made on such form, at such time and pursuant to such procedures as determined by the Global Human Resources Group in its sole discretion from time to time.

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**ARTICLE IV**  
**ADMINISTRATION**

**4.1 Committee**

The Plan shall be administered by the Committee (although certain provisions of the Plan shall be administered by the Global Human Resources Group as specified herein). The Committee shall have full discretionary authority to interpret the provisions of the Plan, and decide all questions and settle all disputes which may arise in connection with the Plan, and may establish its own operative and administrative rules and procedures in connection therewith, provided such procedures are consistent with the requirements of Section 503 of ERISA. All interpretations, decisions and determinations made by the Committee will be binding on all persons concerned. No member of the Committee who is a Participant in the Plan may vote or otherwise participate in any decision or act with respect to a matter relating solely to such member (or to such member's Beneficiaries). Not in limitation, but in amplification, of the foregoing provisions of this Section, the Committee has the duty and power to modify or supplement any Plan accounting method, practice or procedure, make any adjustments to accounts or modify or supplement any other aspect of the operation or administration of the Plan in such manner and to such extent consistent with and permitted by the Code that the Committee deems necessary or appropriate to correct errors and mistakes, to effect proper and equitable account adjustments or otherwise to ensure the proper and appropriate administration and operation of the Plan.

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**ARTICLE V**  
**AMENDMENT OR TERMINATION OF PLAN**

**5.1 Amendment and Termination**

The Plan may be amended or terminated in writing by the Committee or the Company in any manner at any time. Notwithstanding the previous sentence, no such amendment or termination shall reduce the amount of a Participant's benefit or the Participant's distribution rights related thereto as determined under the provisions of the Plan in effect immediately prior to such amendment or termination, and this second sentence of this Article is irrevocable and may not be amended.

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**ARTICLE VI**  
**MISCELLANEOUS**

**6.1 Assignment or Alienation**

- (a) Except as provided in subsection (b) of this Section or as otherwise required by applicable law, the interest hereunder of any Participant or Beneficiary shall not be alienable by the Participant or Beneficiary by assignment or any other method and will not be subject to be taken by the Participant's or Beneficiary's creditors by any process whatsoever, and any attempt to cause such interest to be so subjected shall not be recognized.
- (b) All or a portion of a Participant's benefit under the Plan may be paid to another person as specified in a "Qualified Domestic Relations Order." For this purpose, a "Qualified Domestic Relations Order" means a judgment, decree, or order (including the approval of a settlement agreement) which is:
  - (i) issued pursuant to a State's domestic relations law;
  - (ii) relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of the Participant;
  - (iii) creates or recognizes the right of a spouse, former spouse, child or other dependent of the Participant to receive all or a portion of the Participant's benefits under the Plan;
  - (iv) provides for payment in an immediate lump sum as soon as practicable after the Committee determines that a Qualified Domestic Relations Order exists; and
  - (v) meets such other requirements established by the Committee.
- (c) The Committee shall determine whether any document received by it is a Qualified Domestic Relations Order. In making this determination, the Committee may consider:
  - (i) the rules applicable to "domestic relations orders" under Section 414(p) of the Code and Section 206(d) of ERISA;
  - (ii) the procedures used under the Basic Plan to determine the qualified status of domestic relations orders; and
  - (iii) such other rules and procedures as it deems relevant.

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**6.2 Limitation of Rights**

Neither the establishment of the Plan, nor any amendment thereof, nor the payment of any benefits will be construed as giving any individual any legal or equitable right against the Company, any Participating Employer, or the Committee. In no event will the Plan be deemed to constitute a contract between any Employee and the Company, a Participating Employer, or the Committee. The Plan shall not be deemed to be consideration for, or an inducement for, the performance of services by any employee of a Participating Employer.

**6.3 Receipt and Release**

Any payment under the Plan to any Participant or Beneficiary, or to any individual as described in Section 6.12 shall be in satisfaction of all claims with respect to benefits under the Plan against the Company, any Participating Employer, and the Committee.

**6.4 Governing Law**

The Plan will be construed, administered, and governed in accordance with the laws of the State of North Carolina, except to the extent such laws are preempted by federal law.

**6.5 Status Under ERISA**

The Plan is maintained for purposes of providing deferred compensation for a select group of management or highly compensated employees. In addition, to the extent that the Plan makes up benefits limited under the Basic Plan as a result of Section 415 of the Code, the Plan shall be considered an "excess benefit plan" within the meaning of ERISA.

**6.6 Compliance with Section 409A of the Code**

The Plan is intended to comply with Section 409A of the Code, with respect to amounts earned or vested under the Plan after 2004. Further, the Plan is intended to be operated and administered in a manner (a) that will not constitute a "material modification" of the Plan for purposes of the effective date provisions of Section 409A of the Code or (b) that would otherwise cause amounts earned and vested prior to 2005 to become subject to the requirements of Section 409A of the Code. Notwithstanding any provision of the Plan to the contrary, the Plan shall be interpreted, operated and administered in a manner consistent with this intent.

**6.7 Severability**

If any provision of the Plan is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue to be fully effective.

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**6.8 Headings and Subheadings**

Headings and subheadings are inserted for convenience only and are not to be considered in the construction of the provisions of the Plan.

**6.9 Nonduplication of Benefits**

The benefits payable to a Participant under this Plan shall be reduced on an Actuarial Equivalent basis by the benefit such Participant earned under any other similar nonqualified excess defined benefit plan that does not provide for a reduction of benefits under such plan, for benefits payable under this Plan, to the extent that the benefits under such plan were accrued upon the Participant's service that was included as credited service under this Plan.

**6.10 Social Security Tax**

Subject to the requirements of Section 3121(v)(2) of the Code, the Committee has the full discretion and authority to determine when Federal Insurance Contribution Act ("FICA") taxes on a Participant's Plan benefit or account are paid and whether any portion of such FICA taxes shall be withheld from the Participant's wages or deducted from the Participant's benefit or account.

**6.11 Claims Procedure**

Any claim for benefits under the Plan by a Participant or Beneficiary shall be made in accordance with the claims procedures set forth in the Basic Plan.

**6.12 Payment for Benefit of Incapacitated Individual**

In the event any amount becomes payable under the provisions of the Plan to a Participant, Beneficiary, or other person who is a minor or an incompetent, whether or not declared incompetent by a court, such amount may be paid directly to the minor or incompetent person or to such person's fiduciary (or attorney-in-fact in the case of an incompetent) as the Global Human Resources Group, in its sole discretion, may decide, and the Global Human Resources Group shall not be liable to any person for any such decision or any payment pursuant thereto.

**6.13 Limited Effect of Restatement**

Notwithstanding anything to the contrary contained in the Plan, to the extent permitted by ERISA and the Code, this instrument shall not affect the availability, amount, form or method of payment of benefits being paid before the effective date hereof to any Participant for former Participant (or a Beneficiary of either) in the Plan who is not an active Participant on or after the effective date hereof, said availability, amount, form or method of payment of benefits, if any, to be determined in accordance with the applicable provisions of the Plan as in effect prior to the effective date hereof.



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**6.14 Binding Effect**

The Plan (including any and all amendments thereto) shall be binding upon the Participating Employers, their respective successors and assigns, and upon the Participants and their Beneficiaries and their respective heirs, executors, administrators, personal representatives and all other persons claiming by, under or through any of them.

IN WITNESS WHEREOF, Bank of America Corporation has caused the Plan to be executed by its duly authorized officer this 18 day of December, 2009.

BANK OF AMERICA CORPORATION

By: /s/ Mark S. Behnke

Mark S. Behnke  
Global Compensation, Benefits and  
Shared Services Executive

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**APPENDIX A**

**SPECIAL RULES FOR SERVICE WITH ACQUIRED ENTITIES**

This Appendix A is part of the Plan and contains special rules applicable only to the Participants described herein. If provisions of this Appendix A conflict with any other provisions of the Plan with respect to such Participants, the provisions of this Appendix A shall govern.

**A. Shawmut National Corporation**

1. The Shawmut National Corporation Excess Benefit Plan ("Shawmut Excess Plan") merged into the Plan effective as of January 1, 1997. As of that date, the liabilities of the Shawmut Excess Plan became the liabilities of the Plan and the Shawmut Excess Plan ceased to exist. Notwithstanding anything in the Plan to the contrary, the benefit under the Plan of a Participant who was a former participant in the Shawmut Excess Plan shall not be less than the benefit such Participant would be deemed to have accrued under the terms of the Shawmut Excess Plan as of the date this Appendix A was adopted.
2. Each individual who was a participant in the Shawmut Excess Plan or the Shawmut National Corporation Executive Supplemental Retirement Plan ("Shawmut SERP") immediately prior to the date as of which Shawmut National Corporation merged with Fleet Financial Group, Inc. (predecessor to the Company), and who became an employee of the Company or a subsidiary or affiliate as of said merger date, became a Participant in the Plan as of January 1, 1997. This Section A of Appendix A applies solely to former participants in the Shawmut Excess Plan or Shawmut SERP ("Shawmut Participants").
3. The benefits of Shawmut Participants shall be determined by taking into account the principles and provisions of Specification Schedule J of the Basic Plan. For Traditional Participants, this includes adjustment of their December 31, 1996 benefit, transferred from the Shawmut Excess Plan, for increases in Average Annual Compensation after 1996.
4. As of January 1, 1997, the following Cash Balance Participants shall have the following opening amounts credited to their Cash Balance Accounts under the Plan, which represents the total value of their benefits under the Shawmut Excess Plan as of December 31, 1996, reduced by the deemed Shawmut Excess Plan offset described in Section 5, where applicable, expressed as a single sum:

Appendix A-1

NAME	PERSON NUMBER	OPENING CASH BALANCE
CLAFFEE, JAMES	Not Available	\$ 2,418.50
DELFINO, PAUL	Not Available	\$ 6,747.34
EYLES, DAVID	Not Available	\$ 17,775.70
FALK, MICHAEL	Not Available	\$ 1,509.82
HEDGES JR., ROBERT	Not Available	\$ 3,074.22
HUSTON, JOHN	Not Available	\$ 7,843.30
MALLON, WILLIAM	Not Available	\$ 4,567.26

5. Because participants in the Shawmut SERP were not also participants in the Shawmut Excess Plan, their benefit under the Plan, which is calculated by taking into account their service with Shawmut, shall be reduced by the following amounts, or the Actuarial Equivalent thereof, which are the benefits that they would have accrued under the Shawmut Excess Plan as of December 31, 1996, with Credited Service frozen as of December 1, 1995, if they had been participants in the Shawmut Excess Plan:

NAME	PERSON NUMBER	EXCESS PLAN OFFSET OF MONTHLY NORMAL RETIREMENT BENEFIT
BERGER, JOHN	Not Available	\$ 382.62
BROMAGE, WILLIAM	Not Available	\$ 364.00
KRAUS, EILEEN	Not Available	\$ 2,294.25
OVERSTROM, GUNNAR	Not Available	\$ 8,170.96
ROTTNER, SUSAN	23510624	\$ 565.74

**B. Liberty Wanger Asset Management**

No employee who was employed with Liberty Wanger Asset Management, L.P. at the time of the acquisition by Fleet National Bank (predecessor to the Company) of the asset management business of Liberty Financial Companies, Inc., shall be a Participant in the Plan at any time prior to January 1, 2005.

**C. Progress Investment Management Company, Inc.**

Notwithstanding anything in the Plan to the contrary, Marx Cazenave, a former employee of Progress Investment Management Company, Inc., shall not be a Participant in the Plan, and neither Mr. Cazenave nor any Beneficiary of his shall be entitled to a benefit under the Plan.

**D. Fleet Capital Corporation**

1. **Merger:** The Fleet Capital Corporation Retirement Restoration Plan ("Fleet Capital Restoration Plan") shall merge into the Plan effective as of January 1, 2006. As of that date, the liabilities of the Fleet Capital Restoration Plan shall become the liabilities of the Plan and the Fleet Capital Restoration Plan shall cease to exist.
2. **Eligibility:** This Section D of Appendix A shall apply solely to employees who had been participants in the Fleet Capital Restoration Plan ("Fleet Capital Participants"), determined as follows:
  - (a) Subject to the provisions of subsections (b) and (c) of this Section 2, the Committee shall in its sole discretion determine which Participants of the Retirement Plan of Fleet Capital Corporation shall be entitled to participate in the Plan. Such Participants shall be memorialized in a Schedule of Plan Participants, which Schedule may from time to time be modified by the Committee, and which Schedule is set forth in Section 8 of this Section D.
  - (b) Any Plan Participant who is not included in the Schedule of Participants described in subsection (a) of this Section, but who has accrued a benefit under the Fleet Capital Restoration Plan as of February 28, 1997, shall cease to accrue further benefits under the Fleet Capital Restoration Plan as of March 1, 1997, but shall continue to be a Participant with respect to benefits accrued prior to such date until the earlier of the date such Participant ceases to be entitled to benefits under the terms of the Plan, or the date such Participant receives payment from a Participating Employer with respect to all amounts accrued to him under the terms of the Plan.
  - (c) In no event shall a Participant or Beneficiary who is not entitled to benefits under Specification Schedule M of the Basic Plan become entitled to benefits under the Plan.
  - (d) Any Plan Participant who is not included in the Schedule of Participants described in subsection (a) of this Section 2, but who has accrued a benefit under the Fleet Capital Restoration Plan as of June 30, 1997 shall cease to accrue further benefits under the Fleet Capital Restoration Plan as of June 30, 1997, but shall continue to be a Participant with respect to benefits accrued prior to such date until the

earlier of the date such Participant ceases to be entitled to benefits under the terms of the Plan, or the date such Participant receives payment from a Participating Employer with respect to all amounts accrued to him under the terms of the Plan.

3. **Amount Of Benefit:** Notwithstanding Article IV, the benefits of Fleet Capital Participants shall be determined as follows:

- (a) The benefit which a Participating Employer shall provide to a Fleet Capital Participant who is eligible to participate as a Class I Participant pursuant to the provisions of the Schedule of Participants as revised effective June 1, 1998, or the Participant's Beneficiary(ies) under the Plan shall equal the benefit determined under subsection (c) of this Section 3, provided that if such Participant's employment with the Participating Employers is for any reason involuntarily terminated by the Participating Employers, such Participant shall for purposes of this Section 3 be credited with additional Years of Service equal in number to the additional Years of Service he would have earned under the terms of Specification Schedule M of the Basic Plan had he continued in the employ of the Participating Employers through his Normal Retirement Date. Such additional Years of Service shall be credited as of his date of termination of employment.
- (b) The benefit which the Participating Employers shall provide to a Fleet Capital Participant who is eligible to participate as a Class II Participant pursuant to the provisions of the Schedule of Participants as revised effective June 1, 1998, or the Participant's Beneficiary(ies) under the Plan shall equal the benefit determined under subsection (c) of this Section 3, provided that if such Participant's employment with the Participating Employers is for any reason involuntarily terminated by the Participating Employers, such Participant shall for purposes of this Section 3 be credited with additional Years of Service equal in number to the additional Years of Service he would have earned under the terms of Specification Schedule M of the Basic Plan had he continued in the employ of the Participating Employers through his Early Retirement Date. Such additional Years of Service shall be credited as of his date of termination of employment.
- (c) Subject to the provisions of subsections (a) and (b) of this Section 3, the benefit which the Participating Employers shall provide to a Fleet Capital Participant who is eligible to participate as a Class I, Class II or Class III Participant pursuant to the provisions of the Schedule of Participants as revised effective June 1, 1998, or the Participant's Beneficiary(ies) under the Plan shall equal the excess of (i) reduced by (ii), where:
  - (i) equals the monthly benefit which would have been provided to such Participant or his Beneficiary under the Specification

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Schedule M of the Basic Plan, calculated without regard to the following:

- (A) without regard to any reduction in compensation attributable to participation in a non-qualified plan of deferred compensation;
  - (B) without regard to any reduction in compensation attributable to participation in Specification Schedule M of the Basic Plan if such Specification Schedule M of the Basic Plan where administered without regard to the provisions of Section 415 of the Code;
  - (C) without regard to the provisions of Section 401(a)(17) of the Code;
  - (D) without regard to the reduction in bonus earnings taken into consideration in determining Specification Schedule M of the Basic Plan pensionable earnings pursuant to Section 1.3(a)(ii) thereof; and
  - (E) without regard to any reduction applicable to such Participant who is not eligible for any early retirement subsidy otherwise available under the terms of Specification Schedule M of the Basic Plan because of such Participant's status as a Highly Compensated Employee as defined in the Basic Plan; and
- (ii) equals the sum of (A), (B) and (C) where:
- (A) equals the benefit which will be provided to such Participant or his Beneficiary under Specification Schedule M of the Basic Plan subject to the restrictions and limitations described in paragraph (i) hereof;
  - (B) equals the benefit, if any, accrued to such Participant or his Beneficiary under the terms of the Restated Retirement Plan of BarclaysAmericanCorporation, or the Restated Retirement Plan of Barclays Bank PLC, as applicable, on January 31, 1995; and
  - (C) equals the benefit, if any, accrued to such Participant or his Beneficiary under the terms of the BarclaysAmericanCorporation Retirement Restoration Plan, or the Barclays Bank PLC Retirement Restoration Plan, as applicable, on January 31, 1995.

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- (d) The benefit which the Participating Employers shall provide to a Fleet Capital Participant who is eligible to participate as a Class IV Participant pursuant to the provisions of the Schedule of Participants as revised effective June 1, 1998, or the Participant's Beneficiary(ies) under the Plan shall equal the excess of (i) reduced by (ii), where:
- (i) equals the monthly benefit which would have been provided to such Participant or his Beneficiary under Specification Schedule M of the Basic Plan, calculated without regard to the following:
    - (A) subject to Item (E), without regard to any reduction in compensation attributable to participation in a non-qualified plan of deferred compensation;
    - (B) subject to Item (E), without regard to any reduction in compensation attributable to participation in Specification Schedule M of the Basic Plan if such Specification Schedule were administered without regard to the provisions of Section 415 of the Code; (C) subject to Item (E), without regard to the provisions of Section 401(a)(17) of the Code;
    - (C) with respect to bonus earnings paid prior to July 1, 1997, without regard to the reduction in bonus earnings taken into consideration in determining Specification Schedule M of the Basic Plan pensionable earnings pursuant to Section 1.3(a)(ii) thereof;
    - (D) with respect to bonus earnings paid on or after July 1, 1997, without regard to so much of the reduction in bonus earnings excluded in determining Specification Schedule M of the Basic Plan pensionable earnings pursuant to Section 1.3(a)(ii) thereof as does not exceed 150% of such Participant's annual base salary or wages taken into consideration as pensionable earnings under the terms of the Specification Schedule M of the Basic Plan; and
    - (E) without regard to any reduction applicable to such Participant who is not eligible for any early retirement subsidy otherwise available under the terms of Specification Schedule M of the Basic Plan because of such Participant's status as a Highly Compensated Employee as defined in the Basic Plan; and
  - (ii) equals the sum of (A), (B) and (C) where:
    - (A) equals the benefit which will be provided to such Participant or his Beneficiary under Specification Schedule M of the

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- Basic Plan subject to the restrictions and limitations described in paragraph (i);
- (B) equals the benefit, if any, accrued to such Participant or his Beneficiary under the terms of the Restated Retirement Plan of BarclaysAmericanCorporation, or the Restated Retirement Plan of Barclays Bank PLC, as applicable, on January 31, 1995; and
  - (C) equals the benefit, if any, accrued to such Participant or his Beneficiary under the terms of the BarclaysAmericanCorporation Retirement Restoration Plan, or the Barclays Bank PLC Retirement Restoration Plan, as applicable, on January 31, 1995.
- (e) The benefit which the Participating Employers shall provide to a Fleet Capital Participant who is eligible to participate as a Class V Participant pursuant to the provisions of the revised Schedule of Participants as revised effective July 1, 2000, or the Participant's Beneficiary (ies) under the Plan shall equal the excess of (i) reduced by (ii) where:
- (i) equals the monthly benefit which would have been provided to such Participant or Beneficiary under Specification Schedule M of the Basic Plan, calculated with regard to the following:
    - (A) with respect to the provisions of Section 401(a)(17) of the Code;
    - (B) with respect to bonus earnings included in determining pensionable earnings pursuant to Section 1.3(a)(ii) of said Specification Schedule thereof up to 20% of such Participant's annual base salary or wages taken into consideration as pensionable earnings under the terms of such Specification Schedule;
    - (C) with respect to the accrued benefit, if any, to such Participant under the terms of the Retirement Plan for BarclaysAmerican Corporation or the Barclays Bank PLC U.S.A. Staff Pension Plan, as applicable on January 31, 1995;
    - (D) with respect to accrued benefit, if any, to such Participant under the terms of the NatWest Bank, N.A. Retirement Plan determined as of December 31, 1996.
  - (ii) is the benefit, if any, accrued to such Participant under the terms of the Basic Plan.



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- (f) Notwithstanding any other provision of the Plan to the contrary, no amount received by a Fleet Capital Participant as special pay, stay pay or severance pay, including, but not limited to, any amount paid from any pool of funds created in connection with the sale of Barclays Commercial Corporation shall be taken into account for purposes of determining the amount of benefits payable under the Plan.
  - (g) Notwithstanding any other provision of the Plan to the contrary, a Fleet Capital Participant who was a Participant in the Fleet Capital Restoration Plan on February 28, 1997, but who is not included in the Schedule of Participants with respect to benefits accruing on and after March 1, 1997, shall cease to accrue Fleet Capital Restoration Plan benefits on and after March 1, 1997. The Committee shall pay such Participants out pursuant to the provisions of Section 4 hereof.
  - (h) Notwithstanding any other provision of the Plan to the contrary, a Fleet Capital Participant who was a Participant in the Fleet Capital Restoration Plan on June 30, 1997, but who is not included in the Schedule of Participants with respect to benefits accruing on and after July 1, 1997, shall cease to accrue Fleet Capital Restoration Plan benefits on and after July 1, 1997. The Committee shall pay such Participants out pursuant to the provisions of Section 4 hereof.

4. **Form and Timing of Benefits:** Payment of Plan benefits to a Fleet Capital Participant or the Participant's Beneficiary shall be made in accordance with the provisions of Section 4 of the Plan. Plan benefits shall in all respects be subject to any applicable income tax withholding under federal or state law.
5. **Vesting:** A Fleet Capital Participant shall have the same nonforfeitable right to benefits payable on the Participant's behalf under the Plan as such Participant has to benefits payable on the Participant's behalf pursuant to the provisions of Specification Schedule M of the Basic Plan provided, however, that such benefits are subject to complete forfeiture to the extent that, in the sole and exclusive discretion of the Participating Employer, such Participant is determined to have engaged in activities, whether before or after Plan benefit payments commence, which are both fraudulent and detrimental to a Participating Employer.
6. **Definitions:** All terms under Section D of Appendix A of the Plan shall have the meaning set forth for such terms pursuant to the provisions of Specification Schedule M of the Basic Plan.
7. **Amendment and Funding:** This Section D of Appendix A may be amended only with the written consent of Bank of America, N.A. All benefits determined to be payable under the Fleet Capital Restoration Plan, and all benefits earned under this Section D after the merger, shall be a liability of, and be paid by, Bank of America, N.A.
8. **Schedule of Participants:** As described in Section 2, the Schedule of Plan Participants, executed as of September 11, 2000, is as follows:

Class II Participants

PERSON NUMBER	LAST NAME	FIRST NAME
28086101	Coppedge	Ferrell
24848406	Farley	Michael
29958700	Strauss	Philip
30119520	Swindells	William

Class III Participants

PERSON NUMBER	LAST NAME	FIRST NAME
30119129	Meyers	James

Class IV Participants

PERSON NUMBER	LAST NAME	FIRST NAME
30050784	Ausburn	Lawrence
23735129	Clack	Ronald
30117855	Dianich	Michael Sr.
22267721	Dumelin	Bruce
30120791	Gagnon	Richard
30117694	Johnson	Michael
24464035	Meier	Alan
25059340	Pengelly	Audrey
29749184	Solomon	Stuart

Class V Participants

PERSON NUMBER	LAST NAME	FIRST NAME
21313318	Kreft	Ira
26520022	Tornow	Brian
Not Available	Terry	J. Cameron
21551974	Broderick	Timothy
25506500	Clarke	Timothy

# Employee Stock Compensation Plan Award Agreement

This document contains your Award Agreement and Grant Certificate under the Merrill Lynch & Co., Inc. Employee Stock Compensation Plan.

## What you need to do

1. Review the Award Agreement and Grant Certificate to ensure you understand their provisions. With each award you receive, provisions of your Award Agreement and Grant Certificate may change so it is important to review these documents\*.
2. Print the Award Agreement and Grant Certificate and file them with your important papers.
3. Review your current Beneficiary Designation online at My Compensation and Benefits

\* If you do not decline your Award Agreement and Grant Certificate by contacting your HR Manager by November 15, 2009 or such other date that may be communicated to you, you will be deemed to have accepted the terms of the Award Agreement and Grant Certificate and will be bound by them. If you decline your Award Agreement and Grant Certificate, your award will be cancelled and you will not be entitled to any benefits from the award nor any compensation or benefits in lieu of the cancelled award.

## Summary of Rule of 60 vesting condition

Below is a summary of the vesting condition for Rule of 60 that applies to eligible associates. You meet the Rule of 60 if your age plus length of service (computed as full years and completed months) equals 60, with a minimum of 10 years of service and no minimum age. Your service with Merrill Lynch is included for purposes of determining your length of service. If you do not meet the Rule of 60, this vesting condition does not apply to you.

The Rule of 60 vesting condition for this award only applies in case of your voluntary termination of employment. Different vesting provisions apply in the case of an involuntary termination of your employment without cause, as more fully described in the Award Agreement.

If you terminate your employment after you have attained the Rule of 60, the award will vest in accordance with the original vesting schedule so long as you comply with the Rule of 60 vesting condition, as follows:

- You must not work for a named competitor of Bank of America or its subsidiaries during the remaining vesting period of your award. The current list of named competitors is available at <https://myportal-hr.worldnet.ml.com/media/66569.pdf>. This list will be updated annually. The list in effect at your termination of employment will control.
- You must annually provide a written certification that you are not working for any of the named competitors. Each December, Bank of America will send to the most recent mailing address you have on record a certification form for you to complete and return. If you do not receive your form by early in the new year, you are responsible for obtaining a certification form by contacting the Employee Services Group at 866.654.7411. You will be considered in breach of the vesting condition if you fail to provide written certification as and when required. It is your sole responsibility to ensure that the company receives your annual certification. Accordingly, you need to keep the company apprised of any changes to your mailing address.

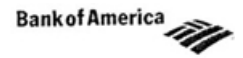


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If you comply with these requirements, your award will continue to vest in accordance with the original vesting schedule. However, if you fail to meet either of the above requirements, the unvested portion of your award will be immediately canceled.

**For more information**

For more information about your award, review your Award Agreement, Grant Certificate and the Plan, which together are the controlling documents for your award. The most recent list of named competitors appears at <https://myportal-hr.worldnet.ml.com/media/66569.pdf>.



**MERRILL LYNCH & CO., INC.**  
**EMPLOYEE STOCK COMPENSATION PLAN**  
**RESTRICTED UNITS AWARD AGREEMENT**

This Restricted Units Award Agreement, including your Grant Certificate and all Exhibits hereto (the "Agreement") is made between Bank of America Corporation, a Delaware corporation ("Bank of America"), and you, an associate of Bank of America or one of its subsidiaries.

Your Restricted Units are being granted under the Merrill Lynch & Co., Inc. Employee Stock Compensation Plan (the "Stock Plan"), which is now sponsored by Bank of America. A Prospectus describing the Stock Plan, which incorporates the terms and conditions of the Stock Plan, is enclosed with this Agreement. The Stock Plan itself is available upon request, and its terms and provisions are incorporated herein by reference. When used herein, the terms which are defined in the Stock Plan shall have the meanings given to them in the Stock Plan, as modified herein (if applicable).

The Restricted Units covered by this Agreement are being awarded to you in connection with your participation in the performance year 2008 program, subject to the following terms and provisions:

1. Subject to the terms and conditions of the Stock Plan and this Agreement, Bank of America awards to you the number of Restricted Units shown in the Grant Certificate (the "Award"). Each Restricted Unit shall have a value equal to the Fair Market Value of one (1) share of Bank of America common stock.
2. You acknowledge having read the Prospectus and this Agreement, and agree to be bound by all the terms and conditions of the Stock Plan and this Agreement.
3. If a cash dividend is paid with respect to Bank of America common stock, you shall be paid in cash at the same time as cash dividends on actual shares of Bank of America common stock are paid an amount equal to the total cash dividend you would have received had your Restricted Units been actual shares of Bank of America common stock.
4. The Restricted Units covered by this Award shall become earned by, and payable to, you in the amounts and on the dates shown on Exhibit A and the enclosed Grant Certificate.
5. You agree that you shall comply with (or provide adequate assurance as to future compliance with) all applicable securities laws and income tax laws as determined by Bank of America as a condition precedent to the delivery of any shares of Bank of America common stock pursuant to this Agreement. In addition, you agree that, upon request, you will furnish a letter agreement providing that (i) you will not distribute or resell any of said shares in violation of the Securities Act of 1933, as amended, (ii) you will indemnify and hold Bank of America harmless against all liability for any such violation and (iii) you will accept all liability for any such violation.
6. If you have not designated a beneficiary to receive payment in connection with past Awards or in connection with the Restricted Units covered by this Agreement, you may wish to consider doing so at My Compensation and Benefits. If you do not designate a beneficiary or if your designated beneficiary does not survive you, then your beneficiary will be your estate. If you wish to change past Beneficiary Designations or specify a new beneficiary for this Award, you may do so at My Compensation and Benefits.

7. The existence of this Award shall not affect in any way the right or power of Bank of America or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations or other changes in Bank of America's capital structure or its business, or any merger or consolidation of Bank of America, or any issue of bonds, debentures, preferred or prior preference stocks ahead of or convertible into, or otherwise affecting the Bank of America common stock or the rights thereof, or the dissolution or liquidation of Bank of America, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.
8. Bank of America may, in its sole discretion, decide to deliver any documents related to this grant or future awards that may be granted under the Stock Plan by electronic means or request your consent to participate in the Stock Plan by electronic means. You hereby consent to receive such documents by electronic delivery and, if requested, agree to participate in the Stock Plan through an on-line or electronic system established and maintained by Bank of America or another third party designated by Bank of America.

Any notice which either party hereto may be required or permitted to give to the other shall be in writing and may be delivered personally, by intraoffice mail, by fax, by electronic mail or other electronic means, or via a postal service, postage prepaid, to such electronic mail or postal address and directed to such person as Bank of America may notify you from time to time; and to you at your electronic mail or postal address as shown on the records of Bank of America from time to time, or at such other electronic mail or postal address as you, by notice to Bank of America, may designate in writing from time to time.

9. Regardless of any action Bank of America or your employer takes with respect to any or all income tax, payroll tax or other tax-related withholding (Tax-Related Items), you acknowledge that the ultimate liability for all Tax-Related Items owed by you is and remains your responsibility and that Bank of America and/or your employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the grant of Restricted Units, including the grant and vesting of the Restricted Units, the subsequent sale of shares acquired upon the vesting of the Restricted Units and the receipt of any dividends; and (ii) do not commit to structure the terms of the grant or any aspect of the Restricted Units to reduce or eliminate your liability for Tax-Related Items.

In the event Bank of America determines that it and/or your employer must withhold any Tax-Related Items as a result of your participation in the Stock Plan, you agree as a condition of the grant of the Restricted Units to make arrangements satisfactory to Bank of America and/or your employer to enable it to satisfy all withholding requirements, including, but not limited to, withholding any applicable Tax-Related Items from the pay-out of the Restricted Units. In addition, you authorize Bank of America and/or your employer to fulfill its withholding obligations by all legal means, including, but not limited to: withholding Tax-Related Items from your wages, salary or other cash compensation your employer pays to you; withholding Tax-Related Items from the cash proceeds, if any, received upon sale of any shares received in payment for your Restricted Units; and at the time of payment, withholding shares sufficient to meet minimum withholding obligations for Tax-Related Items. Bank of America may refuse to issue and deliver shares in payment of any earned Restricted Units if you fail to comply with any withholding obligation.

10. The validity, construction and effect of this Agreement are governed by, and subject to, the laws of the State of New York and the laws of the United States, as provided in the Stock Plan. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of New York and agree that such litigation shall be conducted solely in the courts of New York County, New York or the federal courts for the United States for the District Court for the Southern District of New York, where this grant is made and/or to be performed, and no other courts.
11. In the event any provision of this Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Agreement, and the Agreement shall be construed and enforced as if the illegal or invalid provision had not been included. This Agreement constitutes the final understanding between you and Bank of America regarding the Restricted Units. Any prior agreements, commitments or negotiations concerning the Restricted Units are superseded. Subject to the terms of the Stock Plan, this Agreement may only be amended by a written instrument signed by both parties.

12. If you move to any country outside of the United States during the term of your Award, additional terms and conditions may apply to your Award. Bank of America reserves the right to impose other requirements on the Award to the extent Bank of America determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Award and to require you to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

IN WITNESS WHEREOF, Bank of America has caused this Agreement to be executed by its duly authorized officer effective as of the date of grant listed in your Grant Certificate.

BANK OF AMERICA CORPORATION

By: /s/ Kenneth D. Lewis

Chairman, Chief Executive Officer and President



**Merrill Lynch & Co., Inc.**  
**Employee Stock Compensation Plan**

**PAYMENT OF RESTRICTED UNITS**

(a) PAYMENT SCHEDULE. Subject to the provisions of paragraphs (b) and (c) below, the Restricted Units shall become earned and payable in three (3) equal annual installments if you remain employed with Bank of America and its subsidiaries through each of the payment dates as follows:

<u>Payment Date*</u>	<u>Number of Restricted Units That Become Earned and Payable</u>
First anniversary of Grant Date	One-third (1/3) of Award
Second anniversary of Grant Date	One-third (1/3) of Award
Third anniversary of Grant Date	One-third (1/3) of Award

\*Once your Restricted Units become earned and payable, shares of Common Stock will be delivered, as soon as administratively practicable, to a Merrill Lynch account. As a participant in the Stock Plan, you must designate a Merrill Lynch account into which shares of Common Stock will be deposited when they are released to you. This account cannot be a Trust Account, Individual Retirement Account or other tax-deferred account. You may use a joint account if you are the primary owner of the account. Account designations can be made on the Payroll Self Service Web Site at <http://hr.worldnet.ml.com/edf2>. (From the HR Intranet homepage, click on Payroll Self Service.) If you do not designate an account, a Merrill Lynch Limited Individual Investor Account (LIIA) will be opened on your behalf.

(b) IMPACT OF TERMINATION OF EMPLOYMENT ON RESTRICTED UNITS. If your employment with Bank of America and its subsidiaries terminates prior to any of the above payment date(s), then any unearned Restricted Units shall become earned and payable or be canceled depending on the reason for termination as follows:

- (i) Death. Any unearned Restricted Units shall become immediately earned and payable as of the date of your termination of employment if your termination is due to death.
- (ii) Disability. Any unearned Restricted Units shall become immediately earned as of the date of your termination of employment if your termination is due to disability, and shall be paid in accordance with the schedule set forth in paragraph (a).
- (iii) Termination Without Cause or With Good Reason. If your employment is terminated by your employer without "Cause" or by you with "Good Reason" (as such terms are defined in your employment letter agreement dated May 1, 2008), then any unearned Restricted Units shall become immediately earned and payable as of the date of your termination of employment.
- (iv) Rule of 60. If you terminate your employment and are eligible for the Rule of 60, any unearned Restricted Units shall continue to become earned and payable in accordance with the schedule set forth in paragraph (a) above, provided that (A) you comply with the covenants set forth in this Award Agreement during such period; (B) you do not

engage in Competition during such period, and (C) prior to each payment date, you provide Bank of America with a written certification that you have not engaged in Competition and have complied with each of the covenants listed in paragraph (c). To be effective, such certification must be provided on such form, at such time and pursuant to such procedures as Bank of America shall establish from time to time. If Bank of America determines in its reasonable business judgment that you have failed to satisfy either of the foregoing requirements, then any unearned Restricted Units shall be immediately canceled as of the date of such determination. In addition, from time to time following your termination of employment after having attained the Rule of 60, Bank of America may require you to further certify that you are not engaging in Competition, and if you fail to fully cooperate with any such requirement Bank of America may determine that you are engaging in Competition. If you engage in Competition before your Restricted Units become earned and payable, Bank of America shall have all rights to injunctive relief specified in paragraph (c)(vii).

- (v) Termination by Bank of America With Cause. If your employment is terminated by your employer with Cause, then any Restricted Units that were not already earned and payable pursuant to paragraph (a) above as of the date of termination of employment shall be canceled as of that date.
- (vi) All Other Terminations. If your employment is terminated for any other reasons than those specified in clauses (i) through (iv) including, but not limited to, any voluntary termination by you for any reason before you have attained the Rule of 60, any Restricted Units that were not already earned and payable pursuant to paragraph (a) above as of the date of termination of employment shall be canceled as of that date.
- (vii) Change in Control. Notwithstanding any provisions of the Stock Plan to the contrary, (A) the provisions of Article V of the Stock Plan (“Payments Upon Termination of Employment After a Change in Control”) shall not apply to this Award with respect to the Bank of America/Merrill Lynch merger; and (B) in the event of a Change in Control (as defined in the Stock Plan, but determined by reference to Bank of America Corporation rather than Merrill Lynch & Co., Inc.), your Restricted Units shall become immediately earned and payable as of the date of such Change in Control.
- (viii) 6-Month Payment Delay. Notwithstanding the foregoing, the issuance of any shares in payment of Restricted Units that have become earned and payable upon your termination of employment shall be delayed until six (6) months following the date of your termination of employment if and to the extent required by Section 409A of the Code.

(c) COVENANTS

- (i) Non-Solicitation. You agree that prior to the final payment date for your Award, you will not directly or indirectly solicit for employment any person who is an associate of Bank of America or any of its subsidiaries.
- (ii) Non-Disparagement. You agree that you will not disparage, portray in a negative light, or make any statement which would be harmful to, or lead to unfavorable publicity for, Bank of America or any of its subsidiaries or any of its or their current or former directors, officers or associates, including without limitation, in any and all interviews, oral statements,

written materials, electronically displayed materials and materials or information displayed on Internet- or intranet-related sites; *provided that*, nothing in this paragraph (c)(ii) shall prohibit or restrict you from (i) providing information to, or otherwise assisting in, an internal investigation, an investigation by Congress, the Securities and Exchange Commission (“SEC”), or any other regulatory or law enforcement agency or self-regulatory organization (“SRO”); (ii) testifying, participating, or otherwise assisting in a proceeding relating to an alleged violation of any federal law relating to fraud or any rule or regulation of the SEC or any SRO or in an internal investigation by Bank of America or its subsidiaries or (iii) testifying, participating, or otherwise assisting in any case, administrative investigation or proceeding relating to an alleged violation of any discrimination or wage law.

- (iii) Confidential and Proprietary Information. You agree that all inventions, copyrightable material, trade secrets or other work conceived, developed or otherwise performed by you in the scope of your employment (during or after business hours) that are related to the financial services industry or related to Merrill Lynch products, services or supporting activities were disclosed to your manager, are the sole property of Bank of America and its subsidiaries and are “works for hire” that are owned by Bank of America. You agree that during your employment with Bank of America and following your termination, you will do whatever necessary to transfer to Bank of America or its subsidiaries, or to document its ownership of, any such property. You further agree not to challenge Bank of America’s ownership rights in such intellectual property, or claim that such intellectual property is owned or co-owned by another person or entity, including yourself. Furthermore, you agree not to use such intellectual property in any way or to attempt to transfer such intellectual property to any other person or entity. You agree that following any termination of employment, you will not, without prior written consent or as otherwise required by law, disclose or publish (directly or indirectly) any Confidential Information to any person or copy, transmit or remove or attempt to use, copy, transmit or remove any Confidential Information for any purpose provided that, nothing in this paragraph (c)(iii) shall prohibit or restrict you from (i) providing information to, or otherwise assisting in, an internal investigation, an investigation by Congress, the SEC, or any other regulatory or law enforcement agency or SRO; (ii) testifying, participating, or otherwise assisting in a proceeding relating to an alleged violation of any federal law relating to fraud or any rule or regulation of the SEC or any SRO or in an internal investigation by Bank of America or a subsidiary or (iii) testifying, participating, or otherwise assisting in any case, administrative investigation or proceeding relating to an alleged violation of any discrimination or wage law.
- (iv) Confidentiality. You also agree that, in the event your employment is terminated, you will not disclose the circumstances of your termination to any other party, *except that*, (i) you may make such disclosure: on a confidential basis to your tax, financial or legal advisors, your immediate family members, or any prospective employer or business partner, *provided that*, in each case, such third party agrees to keep such circumstances confidential. Nothing in this paragraph (c)(iv) shall prohibit or restrict you from (i) providing information to, or otherwise assisting in, an internal investigation, an investigation by Congress, the SEC, or any other regulatory or law enforcement agency or SRO; (ii) testifying, participating, or otherwise assisting in a proceeding relating to an alleged

violation of any federal law relating to fraud or any rule or regulation of the SEC or any SRO or in an internal investigation by Bank of America or a subsidiary or (iii) testifying, participating, or otherwise assisting in any case, administrative investigation or proceeding relating to an alleged violation of any discrimination or wage law.

- (v) Cooperation. You agree (i) to provide truthful and complete cooperation, including but not limited to, your appearance at interviews and depositions, in all legal matters, including but not limited to, regulatory and litigation proceedings relating to your employment or area of responsibility at Bank of America or its subsidiaries, whether or not such matters have already been commenced and through the conclusion of such matters or proceedings, and (ii) to provide Bank of America's counsel all documents in your possession or control relating to such regulatory or litigation matters.
- (vi) Notice and Non-Solicitation Period. Certain employees each of whom have been previously identified are required to provide Bank of America or a subsidiary with advance written notice of their voluntary termination of employment and not to solicit associates as more specifically contained in the Notice and Non-Solicitation Agreements provided by their business and functional groups. The terms of these documents are incorporated herein and are available from the Employee Services Group at 866.654.7411.
- (vii) Injunctive Relief. Without limiting any remedies available, you acknowledge and agree that a breach of the covenants contained in subparagraphs (i) and (iii) through (vi) of this paragraph (c) will result in injury to Bank of America and its subsidiaries for which there is no adequate remedy at law and that it will not be possible to measure damages for such injuries precisely. Therefore, you agree that, in the event of such a breach or threat thereof, Bank of America shall be entitled to seek a temporary restraining order and a preliminary and permanent injunction, without bond or other security, restraining you from engaging in activities prohibited by subparagraphs (i) and (iii) through (vi) of this paragraph (c) or such other relief as may be required specifically to enforce any of the covenants in subparagraphs (i) and (iii) through (vi) of this paragraph (c).
- (d) FORM OF PAYMENT. Payment of Restricted Units shall be payable in the form of one share of common stock for each Restricted Unit that is payable.
- (e) DEFINITIONS. For purposes hereof, the following terms shall have the following meanings:

Competition means your being engaged, directly or indirectly, whether as a director, officer, employee, consultant, agent or otherwise, with a business entity that is designated as a "Competitive Business" as of the date of your termination of employment. Bank of America shall communicate such list to you.

Confidential Information means any information concerning the business or affairs of Bank of America or its subsidiaries which is not generally known to the public and includes, but is not limited to, any file, document, book, account, list, process, patent, specification, drawing, design, computer program or file, computer disk, method of operation, recommendation, report, plan, survey, data, manual, strategy, financial data, client information or data, or contract which comes to your

knowledge in the course of your employment or which is generated by you in the course of performing your obligations whether alone or with others.

Disability means “disability” as defined from time to time under any long-term disability plan of Bank of America or subsidiary with which you are employed.

Rule of 60 means, as of the date of your termination of employment with Bank of America and its subsidiaries, you have (i) a length of service of at least ten (10) years and (ii) attained a combined age and length of service equal to at least sixty (60), giving effect to full years and completed months.

# Bank of America Corporation 2009 Stock Unit Award Agreement

This document contains your 2009 Stock Unit Award Agreement. A Beneficiary Designation Form is also included if you wish to designate a beneficiary for your 2009 Stock Unit Award.

**What you need to do**

1. Review the Award Agreement to ensure you understand its provisions.
2. Sign two copies of the Award Agreement.
3. Return one copy of the Award Agreement to Bank of America Executive Compensation Service Delivery; 901 W. Trade Street, 8<sup>th</sup> Floor; NC1-003-08-01; Charlotte, NC 28255, and file the other copy with your important papers.
4. Designate a beneficiary for your Stock Unit Awards by completing a Beneficiary Designation Form and returning it to Bank of America Executive Compensation Service Delivery at the address noted above.



**2009 STOCK UNIT AWARD AGREEMENT**

This 2009 Stock Unit Award Agreement and all Exhibits hereto (the "Agreement") is made between Bank of America Corporation, a Delaware corporation ("Bank of America"), and **[Insert Associate Name]**, an associate of Bank of America or one of its Subsidiaries.

The 2009 Stock Unit Awards covered by this Agreement are being granted to you subject to the following terms and provisions:

1. Subject to the terms and conditions of this Agreement, Bank of America shall deliver Stock Units on November 30, 2009 and December 31, 2009 (each, a "Grant Date"). The number of Stock Units to be awarded each Grant Date (each, an "Award" and collectively, the "Awards") shall be determined by dividing the dollar amount of the Award for the Grant Date by a "divisor price", which is the five-day average closing price of Bank of America Corporation common stock for the five business days immediately preceding and including the applicable Grant Date. Each Stock Unit shall have a value equal to the Fair Market Value of one (1) share of Bank of America common stock. The dollar amounts of the Awards are as follows (or such other dollar amount as Bank of America, in its sole discretion, determines):

<u>Grant Date</u>	<u>Dollar Amount of Award</u>
November 30, 2009 Award:	fifty percent (50%) of <b>\$XX.XX</b>
December 31, 2009 Award:	fifty percent (50%) of <b>\$XX.XX</b>

2. You acknowledge having read and agree to be bound by all the terms and conditions of this Agreement. Capitalized terms not otherwise defined herein shall have the meanings given to such terms on the enclosed Exhibit A.
3. If a cash dividend is paid with respect to Bank of America common stock, you shall not receive any dividend equivalents, additional full or fractional Stock Units or other cash payments with respect to such cash dividends.
4. Each Award shall be payable to you on the date shown on the enclosed Exhibit A, subject to the conditions set forth on the enclosed Exhibit A, to the extent applicable.
5. By executing and returning a Beneficiary Designation Form, you may designate a beneficiary to receive payment of the Awards in the event of your death. If you do not designate a beneficiary or if your designated beneficiary does not survive you, then your beneficiary will be your estate. A Beneficiary Designation Form has been included in your award package.
6. Any notice which either party hereto may be required or permitted to give to the other shall be in writing and may be delivered personally, by intraoffice mail, by fax, by electronic mail or other electronic means, or via a postal service, postage prepaid, to such electronic mail or postal address and directed to such person as Bank of America may notify you from time to time; and to you at your electronic mail or postal address as shown on the records of Bank of America from time to time, or at such other electronic mail or postal address as you, by notice to Bank of America, may designate in writing from time to time.

7. These Awards, and all payments thereof, are subject to all applicable payroll and withholding taxes. Regardless of any employer withholding on your Awards, you are responsible for proper payment and reporting of any income tax, social security taxes and other taxes that are due as a result of your Awards.
8. The validity, construction and effect of this Agreement are governed by, and subject to, the laws of the State of Delaware and the laws of the United States. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by these Awards or this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of North Carolina and agree that such litigation shall be conducted solely in the courts of Mecklenburg County, North Carolina or the federal courts for the United States for the Western District of North Carolina, where this grant is made and/or to be performed, and no other courts.
9. In the event any provision of this Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Agreement, and the Agreement shall be construed and enforced as if the illegal or invalid provision had not been included. This Agreement constitutes the final understanding between you and Bank of America regarding these Awards. Any prior agreements, commitments or negotiations concerning these Awards are superseded. This Agreement may only be amended by a written instrument signed by both parties.
10. This Agreement is intended to comply with Section 409A of the Internal Revenue Code to the extent applicable. Notwithstanding any provision of the Agreement to the contrary, the Agreement shall be interpreted, operated and administered consistent with this intent.
11. If you move to any other country during the term of your Awards, additional terms and conditions may apply to your Awards. Bank of America reserves the right to impose other requirements on the Awards to the extent Bank of America determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Awards and to require you to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.
12. Nothing in this Agreement shall interfere with or limit in any way the right of Bank of America to terminate your employment at any time, nor confer upon you any right to continue in the employment of Bank of America or its Subsidiaries. For purposes of this Agreement, a transfer of your employment between Bank of America and a Subsidiary of Bank of America, or between Subsidiaries, shall not be deemed to be a termination of employment.
13. Bank of America may at any time and from time to time alter, amend, suspend or terminate this Agreement in whole or in part. No termination, amendment or modification of this Agreement shall adversely affect in any material way any Awards already granted under this Agreement, without your written consent.
14. Your rights and interests under this Agreement may not be assigned or transferred. To the extent that you acquire a right to receive payments from Bank of America under this Agreement, such right shall be no greater than the right of any unsecured general creditor of Bank of America. Nothing contained in this Agreement shall be deemed to create a trust of any kind or any fiduciary relationship between you and Bank of America. This Agreement shall be binding on Bank of America and any successor in interest of Bank of America.
15. The Awards shall be equitably adjusted as determined by Bank of America in the event of any stock dividend, stock split or similar change in the capitalization of Bank of America.



16. Notwithstanding anything herein to the contrary, the parties to this Agreement expressly acknowledge that any payment of any kind provided for by this Agreement must comply with all applicable law, including Section 111 of the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009, and the Interim Final Rule promulgated thereunder (collectively, "EESA"). If any payment pursuant to this Agreement would violate applicable law in the reasonable, good faith judgment of Bank of America, you agree to waive your right to or, if permissible, agree to the deferment of, such payment and, to the extent required by the United States Department of the Treasury ("UST"), to execute a release of Bank of America and its Subsidiaries and the UST from any claim arising from failure of Bank of America to make, or the requirement of Bank of America to defer, such payment.
17. You agree that cash payments made pursuant to the awards must be returned to Bank of America if Bank of America determines, in its sole discretion, that the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria, for as long as Bank of America is participating in the Troubled Asset Relief Program, the Capital Purchase Program or any similar program. You also agree that the Stock Units awarded pursuant to this Agreement are subject to the Incentive Compensation Recoupment Policy set forth in the Bank of America Corporate Governance Guidelines. To the extent allowed by and consistent with applicable law and any applicable limitations period, if it is determined at any time that you have engaged in Detrimental Conduct or engaged in any hedging or derivative transactions involving Bank of America common stock that would undermine the long-term performance incentives created by the Awards, Bank of America will be entitled to recover from you in its sole discretion some or all of the Awards. You recognize that if you engage in Detrimental Conduct or any hedging or derivative transactions involving Bank of America common stock, the losses to Bank of America and/or its Subsidiaries may amount to the full value of your Awards.

IN WITNESS WHEREOF, Bank of America has caused this Agreement to be executed by its duly authorized officer, and you have hereunto set your hand, all effective as of the Grant Date listed above.

BANK OF AMERICA CORPORATION

ASSOCIATE

By: /s/ Kenneth D. Lewis

Chief Executive Officer and President

\_\_\_\_\_

**Bank of America Corporation**  
**Stock Unit Awards**

PAYMENT OF AWARD

(a) PAYMENT SCHEDULE. Subject to the provisions of paragraphs (b) and (d) below, the Stock Units shall become payable if you remain employed with Bank of America and its Subsidiaries through each of the payment dates as follows:

- (i) General Payment Schedule: One-thirty-sixth (1/36<sup>th</sup>) of the total Stock Units granted for 2009 shall be payable on the last business day of each month during the three-year period beginning in January 2011 and ending in December 2013 (each, a "Payment Date").
- (ii) Payment Schedule Upon TARP Repayment: Notwithstanding anything in subparagraph (i) to the contrary, in the event that Bank of America repays any of the financial assistance it received under the Troubled Asset Relief Program (TARP), (A) the Payment Date for any Stock Units that would have become payable within the one-year period immediately following the date of such TARP repayment shall be the date of such TARP repayment, and (B) the Payment Date for any other Stock Units that have not yet become payable as of the TARP repayment date shall be one calendar year earlier than the applicable Payment Date specified in subparagraph (i).

Payment shall be made as soon as administratively practicable after each applicable Payment Date, generally within 30 days.

(b) IMPACT OF TERMINATION OF EMPLOYMENT ON PAYMENT OF AWARDS. If your employment with Bank of America and its Subsidiaries terminates prior to any of the above Payment Date(s), then any Award that has not yet been paid shall be paid or canceled depending on the reason for termination as follows:

- (i) Death. Any Award that has not yet been paid pursuant to paragraph (a) shall become immediately payable as of the date of your termination of employment if your termination is due to death.
- (ii) Disability. Any Award that has not yet been paid shall pursuant to paragraph (a) above as of the date of termination of employment due to Disability shall continue to become payable in accordance with the schedule set forth in paragraph (a).
- (iii) Termination by Bank of America With Cause. If your employment is terminated by your employer with Cause, then your right to receive any Award that has not yet been paid shall be immediately canceled as of your employment termination date.
- (iv) All Other Terminations. Any Award that has not already been paid pursuant to paragraph (a) above as of the date of termination of employment shall continue to become payable in accordance with the schedule set forth in paragraph (a),

subject to your complying with the covenants set forth in paragraph (d) of Exhibit A of this Agreement.

(c) FORM OF PAYMENT. Payment of Stock Units shall be made in the form of cash for each Stock Unit that is payable. The amount of the payment that you will receive with respect to the Awards shall be determined by multiplying the number of Stock Units subject to the Awards by the Fair Market Value of one (1) share of Bank of America common stock on the Payment Date.

(d) COVENANTS.

- (i) Non-Solicitation. You agree that during any period in which Awards remain payable, you will not directly or indirectly solicit or recruit for employment or encourage to leave employment with Bank of America or its Subsidiaries, on your own behalf or on behalf of any other person or entity other than Bank of America or its Subsidiaries any person who is an associate of Bank of America and its Subsidiaries. You further agree that during any period in which Awards remain payable, you will not, directly or indirectly, on your own behalf or on behalf of any other person or entity other than Bank of America or its Subsidiaries, solicit any client or customer of Bank of America and its Subsidiaries which you actively solicited or with whom you worked or otherwise had material contact in the course of your employment with Bank of America and its Subsidiaries.
- (ii) Detrimental Conduct. You agree that during any period in which Awards remain payable, you will not engage in Detrimental Conduct.
- (iii) Hedging or Derivative Transactions. You agree that during any period in which Awards remain payable, you will not engage in any hedging or derivative transactions involving Bank of America common stock that would undermine the long-term performance incentives created by the Awards.
- (iv) Remedies. Payment of any Award in accordance with the schedule set forth in paragraph (a) above is specifically conditioned on the requirement that, at all times prior to the applicable Payment Date, you do not engage in solicitation, Detrimental Conduct or hedging or derivative transactions involving Bank of America common stock, as described in Paragraphs (d)(i), (ii) and (iii) during such period. If Bank of America determines in its reasonable business judgment that you have failed to satisfy the foregoing requirement, then any Award that has not yet been paid shall be immediately cancelled as of the date of such determination.

(e) DEFINITIONS. For purposes hereof, the following terms shall have the following meanings:

All Other Terminations means any termination of your employment with Bank of America and its Subsidiaries, whether initiated by you or your employer, other than a termination due to your death or Disability and other than a termination for Cause.

Cause shall be defined as that term is defined in your offer letter or other applicable employment agreement; or, if there is no such definition, "Cause" means a termination of your employment with Bank of America and its Subsidiaries if it occurs in conjunction with a determination by your employer

that you have (i) committed an act of fraud or dishonesty in the course of your employment; (ii) been convicted of (or plead no contest with respect to) a crime constituting a felony; (iii) committed an act or omission which causes you or Bank of America or its Subsidiaries to be in violation of federal or state securities laws, rules or regulations, and/or the rules of any exchange or association of which Bank of America or its Subsidiaries is a member, including statutory disqualification; (iv) failed to perform your job function(s), which Bank of America views as being material to your position and the overall business of Bank of America and its Subsidiaries under circumstances where such failure is detrimental to Bank of America or any Subsidiary; (v) materially breached any written policy applicable to associates of Bank of America and its Subsidiaries including, but not limited to, the Bank of America Corporation Code of Ethics and General Policy on Insider Trading; or (vi) made an unauthorized disclosure of any confidential or proprietary information of Bank of America or its Subsidiaries or have committed any other material violation of Bank of America's written policy regarding Confidential and Proprietary Information.

Detrimental Conduct means (A) any conduct that would constitute Cause or (B) any one of the following: (1) any act or omission by you resulting or intended to result in personal gain at the expense of Bank of America or its Subsidiaries; (2) the improper disclosure by you of proprietary, privileged or confidential information of Bank of America or its Subsidiaries or a client or former client of Bank of America or its Subsidiaries or breach of a fiduciary duty owed to Bank of America or its Subsidiaries or a client or former client of Bank of America or its Subsidiaries; (3) improper conduct by you including, but not limited to, fraud, unethical conduct, falsification of the records of Bank of America or its Subsidiaries, unauthorized removal of property or information of Bank of America or its Subsidiaries, intentional violation or negligent disregard for Bank of America's or its Subsidiaries' policies, rules and procedures, insubordination, theft, violent acts or threats of violence, unauthorized possession of controlled substances on the property of Bank of America or its Subsidiaries, conduct causing reputational harm to Bank of America or its Subsidiaries or a client of Bank of America or its Subsidiaries, or the use of the property, facilities or services of Bank of America or its Subsidiaries for unauthorized or illegal purposes; (4) the performance by you of your employment duties in a manner deemed by Bank of America or its Subsidiaries to be grossly negligent; (5) the commission of a criminal act by you, whether or not performed in the workplace, that subjects, or if generally known, would subject Bank of America or its Subsidiaries to public ridicule or embarrassment; or (6) you taking or maintaining trading positions that result in a need to restate financial results in a subsequent reporting period or that result in a significant financial loss to Bank of America or its Subsidiaries during or after the performance year.

Disability means "disability" as defined from time to time under any long-term disability plan of Bank of America or your employer.

Fair Market Value means on any date, the closing price of a share of Bank of America common stock 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 any other publication selected by Bank of America; provided, however, that if the shares are misquoted by the selected publication(s), Bank of America shall directly solicit the information from officials of the stock exchanges or from other informed independent market sources.

Subsidiary means any corporation, partnership, joint venture, affiliate or other entity in which Bank of America owns more than eighty percent (80%) of the voting stock or voting ownership interest, as applicable, or any other business entity designated by Bank of America as a Subsidiary for purposes of this Agreement.

**Bank of America Corporation  
Stock Unit Awards**

Beneficiary Designation Form

Please complete this form if you wish to designate a beneficiary for your stock unit awards ("Awards") or if you wish to change your current beneficiary designation. Completed forms should be returned to Bank of America Executive Compensation Service Delivery; 901 W. Trade Street, 8<sup>th</sup> Floor; NC1-003-08-01; Charlotte, NC 28255.

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With respect to any of my Awards that are outstanding and become payable at the time of my death, I hereby designate the following person or entity as my beneficiary to receive any payments in connection with those Awards in the event of my death.

Designation of Primary Beneficiary. I designate the following as my Primary Beneficiary(ies):

Name of Beneficiary	Birthdate	Address	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Designation of Secondary Beneficiary. I designate the following as my Secondary Beneficiary(ies):

Name of Beneficiary	Birthdate	Address	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Selection of Rule for Deceased Beneficiary. Select either Rule 1 or Rule 2 below by marking with an X. The rule selected shall be applied to Primary Beneficiaries and Secondary Beneficiaries separately so that no Secondary Beneficiary (or issue of a Secondary Beneficiary) shall be entitled to a share of the death benefits unless all Primary Beneficiaries fail to survive the Participant and, if Rule 2 is selected, all issue of all Primary Beneficiaries fail to survive the Participant.

Rule 1. The death benefits shall be paid in equal shares to those named Beneficiaries (either Primary or Secondary, as applicable) who survive me.

Rule 2. The death benefits shall be paid in equal shares to those named Beneficiaries (either Primary or Secondary, as applicable) who survive me and to the surviving issue collectively of each named Beneficiary (either Primary or Secondary, as applicable) who does not survive me but who leaves issue surviving me, with the equal share for such surviving issue of such deceased named Beneficiary to be divided among and paid to such issue on a per stirpes basis. ("Issue" means lineal descendants and includes adopted persons.)

I understand that I may change this designation at any time by executing a new form and delivering it to Bank of America Executive Compensation Service Delivery; 901 W. Trade Street, 8<sup>th</sup> Floor; NC1-003-08-01; Charlotte, NC 28255. This designation supercedes any prior beneficiary designation made by me with respect to my Awards.

Signature of Participant: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Participant (please print): \_\_\_\_\_

Participant's Person Number: \_\_\_\_\_



# Bank of America Corporation

## 2009 Stock Unit Award Agreement

This document contains your 2009 Stock Unit Award Agreement. A Beneficiary Designation Form is also included if you wish to designate a beneficiary for your 2009 Stock Unit Award.

### What you need to do

1. Review the Award Agreement to ensure you understand its provisions.
2. Sign two copies of the Award Agreement.
3. Return one copy of the Award Agreement to Bank of America Executive Compensation Service Delivery; 901 W. Trade Street, 8<sup>th</sup> Floor; NC1-003-08-01; Charlotte, NC 28255, and file the other copy with your important papers.
4. Designate a beneficiary for your Stock Unit Award by completing a Beneficiary Designation Form and returning it to Bank of America Executive Compensation Service Delivery at the address noted above.



**2009 STOCK UNIT AWARD AGREEMENT**

This 2009 Stock Unit Award Agreement and all Exhibits hereto (the "Agreement") is made between Bank of America Corporation, a Delaware corporation ("Bank of America"), and **[Insert Associate Name]**, an associate of Bank of America or one of its Subsidiaries.

The 2009 Stock Unit Award covered by this Agreement is being granted to you subject to the following terms and provisions:

1. Subject to the terms and conditions of this Agreement, Bank of America shall deliver Stock Units on December 31, 2009 (the "Grant Date"). The number of Stock Units to be awarded (the "Award") shall be determined by dividing the dollar amount of the Award by a "divisor price", which is the five-day average closing price of Bank of America Corporation common stock for the five business days immediately preceding and including the Grant Date. Each Stock Unit shall have a value equal to the Fair Market Value of one (1) share of Bank of America common stock. The dollar amount of the Award is **[insert dollar amount]** (or such other dollar amount as Bank of America, in its sole discretion, determines).
2. You acknowledge having read and agree to be bound by all the terms and conditions of this Agreement. Capitalized terms not otherwise defined herein shall have the meanings given to such terms on the enclosed Exhibit A.
3. If a cash dividend is paid with respect to Bank of America common stock, you shall not receive any dividend equivalents, additional full or fractional Stock Units or other cash payments with respect to such cash dividends.
4. The Award shall be payable to you on the date shown on the enclosed Exhibit A, subject to the conditions set forth on the enclosed Exhibit A, to the extent applicable.
5. By executing and returning a Beneficiary Designation Form, you may designate a beneficiary to receive payment of the Award in the event of your death. If you do not designate a beneficiary or if your designated beneficiary does not survive you, then your beneficiary will be your estate. A Beneficiary Designation Form has been included in your award package.
6. Any notice which either party hereto may be required or permitted to give to the other shall be in writing and may be delivered personally, by intraoffice mail, by fax, by electronic mail or other electronic means, or via a postal service, postage prepaid, to such electronic mail or postal address and directed to such person as Bank of America may notify you from time to time; and to you at your electronic mail or postal address as shown on the records of Bank of America from time to time, or at such other electronic mail or postal address as you, by notice to Bank of America, may designate in writing from time to time.
7. This Award, and all payments thereof, is subject to all applicable payroll and withholding taxes. Regardless of any employer withholding on your Award, you are responsible for proper payment and reporting of any income tax, social security taxes and other taxes that are due as a result of your Award.
8. The validity, construction and effect of this Agreement are governed by, and subject to, the laws of the State of Delaware and the laws of the United States. For purposes of litigating any dispute that arises



directly or indirectly from the relationship of the parties evidenced by this Award or this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of North Carolina and agree that such litigation shall be conducted solely in the courts of Mecklenburg County, North Carolina or the federal courts for the United States for the Western District of North Carolina, where this grant is made and/or to be performed, and no other courts.

9. In the event any provision of this Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Agreement, and the Agreement shall be construed and enforced as if the illegal or invalid provision had not been included. This Agreement constitutes the final understanding between you and Bank of America regarding this Award. Any prior agreements, commitments or negotiations concerning this Award are superseded. This Agreement may only be amended by a written instrument signed by both parties.
10. This Agreement is intended to comply with Section 409A of the Internal Revenue Code to the extent applicable. Notwithstanding any provision of the Agreement to the contrary, the Agreement shall be interpreted, operated and administered consistent with this intent.
11. If you move to any other country during the term of your Award, additional terms and conditions may apply to your Award. Bank of America reserves the right to impose other requirements on the Award to the extent Bank of America determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Award and to require you to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.
12. Nothing in this Agreement shall interfere with or limit in any way the right of Bank of America to terminate your employment at any time, nor confer upon you any right to continue in the employment of Bank of America or its Subsidiaries. For purposes of this Agreement, a transfer of your employment between Bank of America and a Subsidiary of Bank of America, or between Subsidiaries, shall not be deemed to be a termination of employment.
13. Bank of America may at any time and from time to time alter, amend, suspend or terminate this Agreement in whole or in part. No termination, amendment or modification of this Agreement shall adversely affect in any material way any Award already granted under this Agreement, without your written consent.
14. Your rights and interests under this Agreement may not be assigned or transferred. To the extent that you acquire a right to receive payments from Bank of America under this Agreement, such right shall be no greater than the right of any unsecured general creditor of Bank of America. Nothing contained in this Agreement shall be deemed to create a trust of any kind or any fiduciary relationship between you and Bank of America. This Agreement shall be binding on Bank of America and any successor in interest of Bank of America.
15. The Award shall be equitably adjusted as determined by Bank of America in the event of any stock dividend, stock split or similar change in the capitalization of Bank of America.
16. Notwithstanding anything herein to the contrary, the parties to this Agreement expressly acknowledge that any payment of any kind provided for by this Agreement must comply with all applicable law, including Section 111 of the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009, and the Interim Final Rule promulgated thereunder (collectively, "EESA"). If any payment pursuant to this Agreement would violate applicable law in the reasonable, good faith judgment of Bank of America, you agree to waive your right to or, if permissible, agree to the deferment of, such payment and, to the extent required by the

United States Department of the Treasury ("UST"), to execute a release of Bank of America and its Subsidiaries and the UST from any claim arising from failure of Bank of America to make, or the requirement of Bank of America to defer, such payment.

17. You agree that cash payments made pursuant to the Award must be returned to Bank of America if Bank of America determines, in its sole discretion, that the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria, for as long as Bank of America is participating in the Troubled Asset Relief Program, the Capital Purchase Program or any similar program. You also agree that the Stock Units awarded pursuant to this Agreement are subject to the Incentive Compensation Recoupment Policy set forth in the Bank of America Corporate Governance Guidelines. To the extent allowed by and consistent with applicable law and any applicable limitations period, if it is determined at any time that you have engaged in Detrimental Conduct or engaged in any hedging or derivative transactions involving Bank of America common stock that would undermine the long-term performance incentives created by the Award, Bank of America will be entitled to recover from you in its sole discretion some or all of the Award. You recognize that if you engage in Detrimental Conduct or any hedging or derivative transactions involving Bank of America common stock, the losses to Bank of America and/or its Subsidiaries may amount to the full value of your Award.

IN WITNESS WHEREOF, Bank of America has caused this Agreement to be executed by its duly authorized officer, and you have hereunto set your hand, all effective as of the Grant Date listed above.

BANK OF AMERICA CORPORATION

ASSOCIATE

By: /s/ Kenneth D. Lewis

Chief Executive Officer and President

\_\_\_\_\_

**Bank of America Corporation  
Stock Unit Award**

PAYMENT OF AWARD

(a) PAYMENT SCHEDULE. Subject to the provisions of paragraphs (b) and (d) below, the Stock Units shall become payable if you remain employed with Bank of America and its Subsidiaries through each of the payment dates as follows: one-thirty-sixth (1/36<sup>th</sup>) of the total Stock Units granted for 2009 shall be payable on the last business day of each month during the three-year period beginning in January 2010 and ending in December 2012 (each, a "Payment Date").

Payment shall be made as soon as administratively practicable after each applicable Payment Date, generally within 30 days.

(b) IMPACT OF TERMINATION OF EMPLOYMENT ON PAYMENT OF AWARD. If your employment with Bank of America and its Subsidiaries terminates prior to any of the above Payment Date(s), then any portion of the Award that has not yet been paid shall be paid or canceled depending on the reason for termination as follows:

- (i) Death. Any portion of the Award that has not yet been paid pursuant to paragraph (a) shall become immediately payable as of the date of your termination of employment if your termination is due to death.
- (ii) Disability. Any portion of the Award that has not yet been paid shall pursuant to paragraph (a) above as of the date of termination of employment due to Disability shall continue to become payable in accordance with the schedule set forth in paragraph (a).
- (iii) Termination by Bank of America With Cause. If your employment is terminated by your employer with Cause, then your right to receive any portion of the Award that has not yet been paid shall be immediately canceled as of your employment termination date.
- (iv) All Other Terminations. Any portion of the Award that has not already been paid pursuant to paragraph (a) above as of the date of termination of employment shall continue to become payable in accordance with the schedule set forth in paragraph (a), subject to your complying with the covenants set forth in paragraph (d) of Exhibit A of this Agreement.

(c) FORM OF PAYMENT. Payment of Stock Units shall be made in the form of cash for each Stock Unit that is payable. The amount of the payment that you will receive with respect to the Award shall be determined by multiplying the number of Stock Units by the Fair Market Value of one (1) share of Bank of America common stock on the Payment Date.

(d) COVENANTS.

- (i) Non-Solicitation. You agree that during any period in which the Award remains payable, you will not directly or indirectly solicit or recruit for employment  
or

encourage to leave employment with Bank of America or its Subsidiaries, on your own behalf or on behalf of any other person or entity other than Bank of America or its Subsidiaries any person who is an associate of Bank of America and its Subsidiaries. You further agree that during any period in which the Award remains payable, you will not, directly or indirectly, on your own behalf or on behalf of any other person or entity other than Bank of America or its Subsidiaries, solicit any client or customer of Bank of America and its Subsidiaries which you actively solicited or with whom you worked or otherwise had material contact in the course of your employment with Bank of America and its Subsidiaries.

- (ii) Detrimental Conduct. You agree that during any period in which the Award remains payable, you will not engage in Detrimental Conduct.
  - (iii) Hedging or Derivative Transactions. You agree that during any period in which the Award remains payable, you will not engage in any hedging or derivative transactions involving Bank of America common stock that would undermine the long-term performance incentives created by the Award.
  - (iv) Remedies. Payment of the Award in accordance with the schedule set forth in paragraph (a) above is specifically conditioned on the requirement that, at all times prior to the applicable Payment Date, you do not engage in solicitation, Detrimental Conduct or hedging or derivative transactions involving Bank of America common stock, as described in Paragraphs (d)(i), (ii) and (iii) during such period. If Bank of America determines in its reasonable business judgment that you have failed to satisfy the foregoing requirement, then any portion of the Award that has not yet been paid shall be immediately cancelled as of the date of such determination.
- (e) DEFINITIONS. For purposes hereof, the following terms shall have the following meanings:

All Other Terminations means any termination of your employment with Bank of America and its Subsidiaries, whether initiated by you or your employer, other than a termination due to your death or Disability and other than a termination for Cause.

Cause shall be defined as that term is defined in your offer letter or other applicable employment agreement; or, if there is no such definition, "Cause" means a termination of your employment with Bank of America and its Subsidiaries if it occurs in conjunction with a determination by your employer that you have (i) committed an act of fraud or dishonesty in the course of your employment; (ii) been convicted of (or plead no contest with respect to) a crime constituting a felony; (iii) committed an act or omission which causes you or Bank of America or its Subsidiaries to be in violation of federal or state securities laws, rules or regulations, and/or the rules of any exchange or association of which Bank of America or its Subsidiaries is a member, including statutory disqualification; (iv) failed to perform your job function(s), which Bank of America views as being material to your position and the overall business of Bank of America and its Subsidiaries under circumstances where such failure is

detrimental to Bank of America or any Subsidiary; (v) materially breached any written policy applicable to associates of Bank of America and its Subsidiaries including, but not limited to, the Bank of America Corporation Code of Ethics and General Policy on Insider Trading; or (vi) made an unauthorized disclosure of any confidential or proprietary information of Bank of America or its Subsidiaries or have committed any other material violation of Bank of America's written policy regarding Confidential and Proprietary Information.

Detrimental Conduct means (A) any conduct that would constitute Cause or (B) any one of the following: (1) any act or omission by you resulting or intended to result in personal gain at the expense of Bank of America or its Subsidiaries; (2) the improper disclosure by you of proprietary, privileged or confidential information of Bank of America or its Subsidiaries or a client or former client of Bank of America or its Subsidiaries or breach of a fiduciary duty owed to Bank of America or its Subsidiaries or a client or former client of Bank of America or its Subsidiaries; (3) improper conduct by you including, but not limited to, fraud, unethical conduct, falsification of the records of Bank of America or its Subsidiaries, unauthorized removal of property or information of Bank of America or its Subsidiaries, intentional violation or negligent disregard for Bank of America's or its Subsidiaries' policies, rules and procedures, insubordination, theft, violent acts or threats of violence, unauthorized possession of controlled substances on the property of Bank of America or its Subsidiaries, conduct causing reputational harm to Bank of America or its Subsidiaries or a client of Bank of America or its Subsidiaries, or the use of the property, facilities or services of Bank of America or its Subsidiaries for unauthorized or illegal purposes; (4) the performance by you of your employment duties in a manner deemed by Bank of America or its Subsidiaries to be grossly negligent; (5) the commission of a criminal act by you, whether or not performed in the workplace, that subjects, or if generally known, would subject Bank of America or its Subsidiaries to public ridicule or embarrassment; or (6) you taking or maintaining trading positions that result in a need to restate financial results in a subsequent reporting period or that result in a significant financial loss to Bank of America or its Subsidiaries during or after the performance year.

Disability means "disability" as defined from time to time under any long-term disability plan of Bank of America or your employer.

Fair Market Value means on any date, the closing price of a share of Bank of America common stock 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 any other publication selected by Bank of America; provided, however, that if the shares are misquoted by the selected publication(s), Bank of America shall directly solicit the information from officials of the stock exchanges or from other informed independent market sources.

Subsidiary means any corporation, partnership, joint venture, affiliate or other entity in which Bank of America owns more than eighty percent (80%) of the voting stock or voting ownership interest, as applicable, or any other business

entity designated by Bank of America as a Subsidiary for purposes of this Agreement.

**Bank of America Corporation  
Stock Unit Award**

Beneficiary Designation Form

Please complete this form if you wish to designate a beneficiary for your stock unit award ("Award") or if you wish to change your current beneficiary designation. Completed forms should be returned to Bank of America Executive Compensation Service Delivery; 901 W. Trade Street, 8<sup>th</sup> Floor; NC1-003-08-01; Charlotte, NC 28255.

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With respect to any portion of my Award that is outstanding and becomes payable at the time of my death, I hereby designate the following person or entity as my beneficiary to receive any payments in connection with the Award in the event of my death.

Designation of Primary Beneficiary. I designate the following as my Primary Beneficiary(ies):

Name of Beneficiary	Birthdate	Address	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Designation of Secondary Beneficiary. I designate the following as my Secondary Beneficiary(ies):

Name of Beneficiary	Birthdate	Address	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Selection of Rule for Deceased Beneficiary. Select either Rule 1 or Rule 2 below by marking with an X. The rule selected shall be applied to Primary Beneficiaries and Secondary Beneficiaries separately so that no Secondary Beneficiary (or issue of a Secondary Beneficiary) shall be entitled to a share of the death benefits unless all Primary Beneficiaries fail to survive the Participant and, if Rule 2 is selected, all issue of all Primary Beneficiaries fail to survive the Participant.

- Rule 1. The death benefits shall be paid in equal shares to those named Beneficiaries (either Primary or Secondary, as applicable) who survive me.
- Rule 2. The death benefits shall be paid in equal shares to those named Beneficiaries (either Primary or Secondary, as applicable) who survive me and to the surviving issue collectively of each named Beneficiary (either Primary or Secondary, as applicable) who does not survive me but who leaves issue surviving me, with the equal share for such surviving issue of such deceased named Beneficiary to be divided among and paid to such issue on a per stirpes basis. ("Issue" means lineal descendants and includes adopted persons.)

I understand that I may change this designation at any time by executing a new form and delivering it to Bank of America Executive Compensation Service Delivery; 901 W. Trade Street, 8<sup>th</sup> Floor; NC1-003-08-01; Charlotte, NC 28255. This designation supercedes any prior beneficiary designation made by me with respect to my Award.

Signature of Participant: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Participant (please print): \_\_\_\_\_

Participant's Person Number: \_\_\_\_\_



# PLAN DOCUMENT

WHEREAS, Boatmen's Bancshares, Inc., a Missouri corporation (the "Corporation"), desires to provide certain key executive employees of the Corporation and its subsidiaries with supplemental benefits in addition to those benefits provided under the Boatmen's Bancshares, Inc. Retirement Plan for Employees.

Therefore, the Boatmen's Supplemental Retirement Plan is adopted, effective as of August 8, 1989, as follows:

## ARTICLE I Definitions

Except as otherwise specified herein or in a Participant's Participation Agreement, all capitalized terms shall have the same meanings as such terms have under the Boatmen's Bancshares, Inc. Retirement Plan for Employees.

Section 1.1 "Board of Directors" means the Board of Directors of Boatmen's Bancshares, Inc.

Section 1.2 "Cause" means conduct of the Participant which is finally adjudged to be knowingly fraudulent, deliberately dishonest or willful misconduct. The Compensation Committee of the Corporation shall have sole and uncontrolled discretion with respect to the application of the provisions of this Section 1.2 and any determination shall be conclusive and binding upon the Participant and all other persons.

Section 1.3 "Change of Control" means any of the following events: (a) any individual corporation (other than the Corporation), partnership, trust, association, pool, syndicate, or any other entity or any group of persons acting in concert becomes the beneficial owner as that concept is defined in Rule 13d-3 promulgated by the SEC under the Securities Exchange Act of 1934, of securities of the Corporation possessing twenty percent (20%) or more of the voting power for the election of directors of the Corporation, (b) there shall be consummated any consolidation, merger or other business combination involving the Corporation or the securities of the Corporation in which holders of voting securities of the Corporation immediately prior to such consummation own, as a group, immediately after such consummation, voting securities of the Corporation (or, if the Corporation does not survive such transaction, voting securities of the corporation surviving such transaction) having less than fifty percent (50%) of the total voting power in an election of directors of the Corporation (or such other surviving corporation), (c) during any period of two consecutive years, individuals who at the beginning of such period constitute the Directors of the Corporation cease for any reason to constitute at least a majority



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thereof unless the election, or the nomination for election by the Corporation's shareholders, of each new Director of the Corporation was approved by a vote of at least two-thirds of the Directors of the Corporation then still in office who were Directors of the Corporation at the beginning of any such period, (d) removal by the stockholders of all or any of the incumbent Directors of the Corporation other than a removal for Cause, and (e) there shall be consummated any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of the Corporation (on a consolidated basis) to a party which is not controlled by or under common control with the Corporation.

Section 1.4 "Code" means the Internal Revenue Code of 1986, as amended.

Section 1.5 "Committee" means the Boatmen's Bancshares, Inc. Compensation Committee.

Section 1.6 "Corporation" means Boatmen's Bancshares, Inc.

Section 1.7 "Employee" means any person employed by the Corporation or any of its subsidiaries.

Section 1.8 "Participant" means any Employee who is selected for participation in the Plan by the Committee as provided in Article II.

Section 1.9 "Plan" means the Boatmen's Supplemental Retirement Plan as set forth herein and as the same may be amended from time to time.

Section 1.10 "Retirement Plan" means the Boatmen's Bancshares, Inc. Retirement Plan for Employees.

## **ARTICLE II**

### **Participation**

Section 2.1 Subject to the provisions of Section 2.2, the Committee shall have exclusive power to designate the Employees who will participate in the Plan.

Section 2.2 Participation in the Plan shall be limited to a select group of Employees of the Corporation and its subsidiaries who are management or highly compensated Employees within the meaning of Section 201(2) of the Employee Retirement Income Security Act of 1974, as amended.

Section 2.3 Each Employee selected to participate in the Plan by the Committee shall indicate his agreement to the terms of the Plan by executing a Participation Agreement, a form of which is attached hereto as Exhibit A. By means of paragraph 4 of the Participation Agreement, an Employee and the Corporation may agree to vary the terms of the Plan as to such Employee.

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## ARTICLE III

### Benefits

Section 3.1 Except in the case of termination for Cause, in which event no benefit shall be payable under the Plan, if a Participant's employment with the Corporation or one of its subsidiaries is terminated (a) by Disability, (b) within one (1) year after a Change in Control, (c) by the Corporation or one of its subsidiaries after the Participant has completed five (5) years of Vesting Service, or (d) after the Participant has satisfied the requirements for early retirement under the Retirement Plan, the Corporation shall pay to the Participant, in the manner provided in Article V, a benefit equal to the excess of the benefit in (i) over the benefit in (ii) described below.

(i) the benefit which the Participant would be entitled to receive under the Retirement Plan (based upon the terms of the Retirement Plan then in effect) upon the Participant's termination of employment and if the benefit under the Retirement Plan were computed

(a) including in Earnings for Retirement Plan purposes incentive compensation, and

(b) without giving effect to the limitations then currently imposed by Section 415 of the Code, the limitations of Section 1.401-4(c) of the Income Tax Regulations or their successors, or the limitations under Section 401(a)(17) of the Code.

(ii) the benefit which the Participant would be entitled to receive under the Retirement Plan upon the Participant's termination of employment, if such benefit were computed without giving effect to the limitation then currently imposed by Section 1.401-4(c) of the Income Tax Regulations or its successor.

Section 3.2 For purposes of Section 3.1(i), a Participant whose employment has terminated for reasons other than death or Disability within one (1) year after a Change in Control and who is not otherwise entitled to receive a benefit under the Retirement Plan shall be deemed to be entitled to receive a benefit under the Retirement Plan based upon the formula set forth in the Retirement Plan.

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## **ARTICLE IV**

### **Death Benefits**

Section 4.1 If the spouse of a Participant is entitled to receive a benefit under the Retirement Plan upon the death of the Participant then such spouse will be entitled to receive a death benefit under this Plan calculated pursuant to the formula set forth in Article III.

## **ARTICLE V**

### **Payment of Benefits**

Section 5.1 Payment of benefits under the Plan will be made in the same manner and at the same time as benefit payments to the Participant or his spouse under the Retirement Plan.

## **ARTICLE VI**

### **Claims**

Section 6.1 If a claim for benefits under the Plan is denied, the Committee will provide a written notice of the denial setting forth the specific reasons for the denial, a description of any additional material or information necessary for a claimant to perfect a claim, and an explanation of why such material or information is necessary and appropriate information as to the steps to be taken for the claim to be submitted for review. A claimant may request a review of a denial. Such requests should be submitted to the Committee, in writing, within 60 days after receipt of the denial notice stating the reasons for requesting the review. A claimant may review pertinent documents and submit issues and comments in writing. A decision will be made on the review of the denial of a claim not later than 60 days after the Committee's receipt of a request for review unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible but not later than 120 days after receipt of a request for review. The decision on review will be in writing to the claimant and shall include specific reasons for the decision.

## **ARTICLE VII**

### **Amendment and Termination**

Section 7.1 The Board of Directors may amend or terminate the Plan at any time provided, however, that no such amendment or termination shall have the effect of depriving Participants of rights accrued under the Plan as of the date of such amendment or termination.

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## **ARTICLE VIII**

### **Administration**

Section 8.1 The Plan shall be administered by the Committee in accordance with its terms, for the exclusive benefit of Participants. The powers and duties of the Committee shall be similar to those powers and duties granted to the Plan Administrator of the Retirement Plan. In addition, the Committee, in its sole discretion, shall have the power to accelerate the payment of benefits under the Plan to any Participant or spouse. Any interpretation or construction of Plan terms or any determination by the Committee with respect to Plan benefits, etc., shall be conclusive and binding with respect to Participants and all other persons.

## **ARTICLE IX**

### **Miscellaneous**

Section 9.1 Nothing contained in this Plan and no action taken pursuant to the provisions of this Plan shall give the Participant the right to be retained in the employ of the Corporation or its subsidiaries or interfere with the right of the Corporation or its subsidiaries to discharge the Participant at any time, nor shall it give the Corporation or its subsidiaries the right to require the Participant to remain in their employ or interfere with the Participant's right to terminate his employment at any time.

Section 9.2 No benefit payable at any time under this Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment or encumbrance of any kind.

Section 9.3 All rights hereunder shall be governed by and construed according to the laws of the State of Missouri, except to the extent such laws are preempted by the laws of the United States of America. In the event any provision of this Plan is held invalid, void or unenforceable, the same shall not affect, in any respect whatsoever, the validity of any other provision of this Plan.

Section 9.4 Nothing contained in this Plan and no action taken pursuant to the provisions of this Plan shall create or be construed to create a trust of any kind or a fiduciary relationship between the Corporation or its subsidiaries and the Participant or any other person. To the extent that any person acquires the right to receive payment from the Corporation under this Plan, such right shall be no greater than the right of any unsecured general creditor of the Corporation.

Section 9.5 The terms of this Plan shall be binding upon and inure to the benefit of the Corporation, its successors and assigns, and the Participant and his heirs and legal representatives.

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Section 9.6 If a Participant becomes entitled to a distribution of benefits under the Plan, and if at such time the Participant has outstanding any debt, obligation, or other liability representing an amount owing to the Corporation or its subsidiaries, then the Corporation may offset such amount so owing against the amount of benefits otherwise distributable. Such determination shall be made by the Committee.

Section 9.7 The Corporation shall, to the extent permitted by law, have the right to deduct from any payments of any kind with respect to the benefit otherwise due to the Participant and Federal, state or local taxes of any kind required by law to be withheld from such payments.

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# EXHIBIT A

## BOATMEN'S SUPPLEMENTAL RETIREMENT PLAN PARTICIPATION AGREEMENT

THIS AGREEMENT is made as of \_\_\_\_\_, 19\_\_, between Boatmen's Bancshares, Inc. ("Corporation") and \_\_\_\_\_ ("Participant").

The Corporation and the Participant mutually agree as follows

1. The Participant has received a copy of the Boatmen's Supplemental Retirement Plan ("Plan") and has read and understands the Plan.
2. By completion of this Agreement, the Participant agrees to comply with the terms of the Plan in all respects.
3. All provisions of the Plan are hereby made a part of this Agreement.
4. The following special provisions are applicable to the Participant's participation in the Plan \_\_\_\_\_

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BOATMEN'S BANCSHARES, INC.

By \_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_  
Participant

\_\_\_\_\_ Date

**Boatmen's Bancshares, Inc.**  
**Employment Agreement For Gregory L. Curl**

This EMPLOYMENT AGREEMENT is made, entered into, and is effective, pursuant to Compensation Committee approval and ratification by the Board of Directors, as of January 30, 1996 (the "Effective Date"), by and between Boatmen's Bancshares, Inc., a Missouri corporation, (the "Company"), and Gregory L. Curl (the "Executive").

WHEREAS, the Executive is presently employed by the Company in the capacity of Vice Chairman; and

WHEREAS, the Executive possesses considerable experience and an intimate knowledge of the business and affairs of the Company, its policies, methods, personnel, and operations; and

WHEREAS, the Company recognizes that the Executive's contributions have been substantial and meritorious and, as such, the Executive has demonstrated unique qualifications to act in an executive capacity for the Company; and

WHEREAS, the Company is desirous of assuring the continued employment of the Executive in the above stated capacities, and Executive is desirous of having such assurance;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements of the parties set forth in this Agreement, and of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**Article 1. Term of Employment**

The Company hereby agrees to employ the Executive and the Executive hereby agrees to continue to serve the Company, in accordance with the terms and conditions set forth herein, for an initial period of three (3) years, commencing as of the Effective Date of this Agreement, as indicated above; subject, however, to earlier termination as expressly provided herein.

The initial three (3) year period of employment automatically shall be extended for one (1) additional year at the end of the initial three (3) year term, and then again after each successive year thereafter. However, either party may terminate this Agreement at the end of the initial three (3) year period, or at the end of any successive one (1) year term thereafter, by giving the other party written notice of intent not to renew, delivered at least three (3) months prior to the end of such initial period or successive term. In the event such notice of intent not to renew is properly delivered, this Agreement, along with all corresponding rights, duties, and covenants, automatically shall expire at the end of the initial period or successive term then in progress.

However, regardless of the above, if at any time during the initial period of employment, or successive term, a Change in Control of the Company occurs (as defined in Article 7 herein), then this Agreement shall become immediately irrevocable for the longer of: (a) two (2) years following the effective date of such Change in Control; or (b) until all obligations of the Company hereunder have been fulfilled, and until all benefits provided hereunder have been paid.

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**Article 2. Position and Responsibilities**

During the term of this Agreement, the Executive agrees to serve as Vice Chairman of the Company. In his capacity as Vice Chairman of the Company, the Executive shall report directly to the Chairman and Chief Executive Officer, and shall maintain the level of duties and responsibilities as in effect as of the Effective Date, or such higher level of duties and responsibilities as he may be assigned during the term of this Agreement. The Executive shall have the same status, privileges, and responsibilities normally inherent in such capacities in financial institutions of similar size and character.

**Article 3. Standard of Care**

During the term of this Agreement, the Executive agrees to devote substantially his full time, attention, and energies to the Company's business and shall not be engaged in any other business activity, whether or not such business activity is pursued for gain, profit, or other pecuniary advantage. However, subject to Article 9 herein, the Executive may serve as a director of other companies so long as such service is not injurious to the Company. The Executive covenants, warrants, and represents that he shall:

- (a) Devote his full and best efforts to the fulfillment of his employment obligations; and
- (b) Exercise the highest degree of loyalty and the highest standards of conduct in the performance of his duties.

This Article 3 shall not be construed as preventing the Executive from investing assets in such form or manner as will not require his services in the daily operations of the affairs of the companies in which such investments are made.

**Article 4. Compensation**

As remuneration for all services to be rendered by the Executive during the term of this Agreement, and as consideration for complying with the covenants herein, the Company shall pay and provide to the Executive the following:

**4.1 Base Salary.** The Company shall pay the Executive a Base Salary in an amount which shall be established from time to time by the Board of Directors of the Company or the Board's designee; provided, however, that such Base Salary shall not be less than Four Hundred Seven Thousand Five Hundred Dollars (\$407,500.00) per year. This Base Salary shall be paid to the Executive in equal bimonthly installments throughout the year, consistent with the normal payroll practices of the Company.

The annual Base Salary shall be reviewed at least annually following the Effective Date of this Agreement, while this Agreement is in force, to ascertain whether, in the judgment of the Board or the Board's designee, such Base Salary should be increased, based primarily on the performance of the Executive during the year and on the then current rate of inflation. If so increased, the Base Salary as stated above shall, likewise, be increased for all purposes of this Agreement.

**4.2 Annual Bonus.** In addition to his salary, the Executive shall be entitled to participate in the Company's short-term incentive program, as such program may exist from time to time, at a level



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commensurate with the Executive's position with the Company, as determined at the sole discretion of the Compensation Committee.

**4.3 Long-Term Incentives.** The Executive shall be eligible to participate in the Company's 1996 Stock Incentive Plan, as such shall be amended or superseded from time to time, at a level commensurate with the Executive's position, as determined at the sole discretion of the Compensation Committee.

**4.4 Retirement Benefits.** The Company shall provide to the Executive participation in all Company qualified defined benefit and defined contribution retirement plans, subject to the eligibility and participation requirements of such plans. The Executive's retirement benefits shall not be less than those that would be provided him under the terms of the Boatmen's Bancshares, Inc. Retirement Plan for Employees and the Boatmen's Supplemental Retirement Plan in effect as of the Effective Date, or as such benefits shall be increased, whether or not such benefits shall be decreased or eliminated. The obligations of the Company pursuant to this Section 4.4 shall survive the termination of this Agreement.

**4.5 Employee Benefits.** The Company shall provide to the Executive all benefits to which other executives and employees of the Company are entitled, as commensurate with the Executive's position, subject to the eligibility requirements and other provisions of such arrangements. Such benefits shall include, but shall not be limited to, group term life insurance, comprehensive health and major medical insurance, dental and life insurance, and short-term and long-term disability.

**4.6 Perquisites.** The Company shall provide to the Executive, at the Company's cost, all perquisites which are suitable to the character of Executive's position with the Company and adequate for the performance of his duties hereunder.

**4.7 Right to Change Plans.** By reason of Sections 4.5 and 4.6 herein, the Company shall not be obligated to institute, maintain, or refrain from changing, amending, or discontinuing any benefit plan, or perquisite, so long as such changes are similarly applicable to executive employees generally.

#### **Article 5. Expenses**

The Company shall pay or reimburse the Executive for all ordinary and necessary expenses, in a reasonable amount, which the Executive incurs in performing his duties under this Agreement including, but not limited to, travel, entertainment, professional dues and subscriptions, and all dues, fees, and expenses associated with membership in various professional, business, and civic associations and societies in which the Executive's participation is in the best interest of the Company.

#### **Article 6. Employment Terminations**

**6.1 Termination Due to Retirement or Death.** In the event the Executive's employment is terminated while this Agreement is in force by reason of retirement (as defined or provided for under the then established rules of the Company's tax-qualified retirement plan), or death, the Executive's benefits shall be determined in accordance with the Company's retirement, survivor's benefits, insurance, and other applicable programs of the Company then in effect (provided, however, that such benefits shall be no less than those set forth in Section 4.4 herein) and, upon the effective date of such termination, the Company's obligation under this Agreement to provide to the Executive the elements of pay described in Sections 4.1, 4.2, and 4.3 shall

immediately expire; provided, however, that the Executive shall receive all rights and benefits that he is vested in, pursuant to the Plan or Plans described in Section 4.3 herein and other plans and programs of the Company; and provided further, however, that any retirement during the periods set forth in Section 7.1 herein shall be subject to the provisions of Article 7 herein.

**6.2 Termination Due to Disability.** In the event that the Executive becomes Disabled (as defined below) during the term of this Agreement and is, therefore, unable to perform his duties herein for more than one hundred eighty (180) total calendar days during any period of twelve (12) consecutive months, or in the event of the Board's reasonable expectation that the Executive's Disability will exist for more than a period of one hundred eighty (180) calendar days, the Company shall have the right to terminate the Executive's active employment as provided in this Agreement. However, the Board shall deliver written notice to the Executive of the Company's intent to terminate for Disability at least thirty (30) calendar days prior to the effective date of such termination.

A termination for Disability shall become effective upon the end of the thirty (30) day notice period. Upon such effective date, the Company's obligation to provide to the Executive the elements of pay described in Sections 4.1, 4.2, and 4.3 shall immediately expire; provided, however, that the Executive shall receive all rights and benefits that he is vested in, pursuant the plan or plans described in Section 4.3 herein and to other plans and programs of the Company.

The term "Disability" shall mean, for all purposes of this Agreement, the incapacity of the Executive, due to injury, illness, disease, or bodily or mental infirmity, to engage in the performance of substantially all of the usual duties of employment with the Company as contemplated by Article 2 herein, such Disability to be determined by the Board of Directors of the Company upon receipt of and in reliance on competent medical advice from one (1) or more individuals, selected by the Board, who are qualified to give such professional medical advice.

It is expressly understood that the Disability of the Executive for a period of one hundred eighty (180) calendar days or less in the aggregate during any period of twelve (12) consecutive months, in the absence of any reasonable expectation that his Disability will exist for more than such a period of time, shall not constitute a failure by him to perform his duties hereunder and shall not be deemed a breach or default and the Executive shall receive full compensation for any such period of Disability or for any other temporary illness or incapacity during the term of this Agreement.

**6.3 Voluntary Termination by the Executive.** The Executive may terminate this Agreement at any time by giving the Board of Directors of the Company written notice of intent to terminate, delivered at least three (3) months prior to the effective date of such termination.

Upon the effective date of such termination, following the expiration of the three (3) months notice period, the Company shall pay the Executive his full Base Salary, at the rate then in effect as provided in Section 4.1 herein, through the effective date of termination, plus all other benefits to which the Executive has a vested right at that time. In the event that the terms and provisions of Article 7 herein do not apply to such termination, the Company and the Executive thereafter shall have no further obligations under this Agreement except as provided in Section 4.4 and Article 9 herein. However, in the event the terms and provisions of Article 7 herein apply, the payments and benefits set forth therein shall apply.

**6.4 Involuntary Termination by the Company Without Cause.** At all times prior to six (6) full calendar months before the effective date of a Change in Control, or at any time more than two (2) years after the effective date of a Change in Control, the Board may terminate the Executive's employment, as provided under this Agreement, at any time, for reasons other than death or Disability, or for Cause, by notifying the Executive in writing of the Company's intent to terminate, at least thirty (30) calendar days prior the effective date of such termination.

Upon the effective date of such termination, following the expiration of the thirty (30) day notice period, the Company shall pay to the Executive a lump-sum cash payment equal to the greater of: (a) the Base Salary then in effect for the remaining term of this Agreement (assuming no additional extensions of this Agreement's term beyond that in effect as of the effective date of termination), together with continuation of health and welfare benefits for the remaining term of this Agreement; or (b) one (1) full year of his Base Salary in effect as of the effective date of termination, plus a one (1) year continuation of health and welfare benefits.

Further, the Company shall pay the Executive all other benefits to which the Executive has a vested right at the time, according to the provisions of the governing plan or program. The Company and the Executive thereafter shall have no further obligations under this Agreement except as provided in Section 4.4 and Article 9 herein.

If the Executive's employment is terminated during the periods set forth in Section 7.1 herein, the Executive shall be entitled to receive the benefits provided in Section 7.1 herein in lieu of the benefits set forth in this Section 6.4.

**6.5 Termination For Cause.** Nothing in this Agreement shall be construed to prevent the Board from terminating the Executive's employment under this Agreement for "Cause."

"Cause" shall be defined as conduct of the Executive which is finally adjudged to be knowingly fraudulent, deliberately dishonest or willful misconduct. The Company's Board of Directors, by majority vote, shall make the determination of whether Cause exists, after providing the Executive with notice of the reasons the Board believes Cause may exist and after giving the Executive the opportunity to respond to the allegation that Cause exists.

In the event this Agreement is terminated by the Board for Cause, the Company shall pay the Executive his Base Salary through the effective date of the employment termination and the Executive shall immediately thereafter forfeit all rights and benefits (other than vested benefits) he would otherwise have been entitled to receive under this Agreement. The Company and the Executive thereafter shall have no further obligations under this Agreement except as provided in Article 9 herein.

**6.6 Termination for Good Reason.** At any time during the term of this Agreement, the Executive may terminate this Agreement for Good Reason (as defined below) by giving the Board of Directors of the Company thirty (30) calendar days written notice of intent to terminate, which notice sets forth in reasonable detail the facts and circumstances claimed to provide a basis for such termination.

Upon the expiration of the thirty (30) day notice period, the Good Reason termination shall become effective, and the Company shall pay and provide to the Executive the benefits set forth in this Section 6.6 (or, in the event of termination for Good Reason within the six (6) full calendar month period prior to the

effective date of a Change in Control, or within two (2) years following the effective date of a Change in Control, the benefits set forth in Section 7.1 herein).

Good Reason shall mean, without the Executive's express written consent, the occurrence of any one or more of the following:

- (a) The assignment of the Executive to duties materially inconsistent with the Executive's authorities, duties, responsibilities, and status (including offices, titles, and reporting requirements) as an officer of the Company, or a reduction or alteration in the nature or status of the Executive's authorities, duties, or responsibilities from those in effect during the immediately preceding fiscal year;
- (b) Without the Executive's consent, the Company's requiring the Executive to be based at a location which is at least fifty (50) miles further from the Executive's primary residence at the time such requirement is imposed than is such residence from the Company's office at which the Executive is primarily rendering services at such time, except for required travel on the Company's business to an extent substantially consistent with the Executive's business obligations as of the Effective Date;
- (c) A reduction by the Company in the Executive's Base Salary as in effect on the Effective Date, as provided in Section 4.1 herein, or as the same shall be increased from time to time;
- (d) A material reduction in the Executive's level of participation in any of the Company's short- and/or long-term incentive compensation plans, or employee benefit or retirement plans, policies, practices, or arrangements in which the Executive participates as of the Effective Date; provided, however, that reductions in the levels of participation in any such plans shall not be deemed to be "Good Reason" if the Executive's reduced level of participation in each such program remains substantially consistent with the average level of participation of other executives who have positions commensurate with the Executive's position; or
- (e) The failure of the Company to obtain a satisfactory agreement from any successor to the Company to assume and agree to perform this Agreement, as contemplated in Section 10.1 herein.

Upon a termination of the Executive's employment for Good Reason at any time other than the six (6) full calendar month period prior to the effective date of a Change in Control, or the two (2) years period following the effective date of a Change in Control, the Executive shall be entitled to receive the same payments and benefits as he is entitled to receive following an involuntary termination of his employment by the Company without Cause, as specified in Section 6.4 herein. The payment of Base Salary and pro rata Bonus shall be made to the Executive within thirty (30) calendar days following the effective date of employment termination. Upon a termination for Good Reason within the six (6) full calendar month period prior to the effective date of a Change in Control, or within the two (2) years following the effective date of a Change in Control, the Executive shall be entitled to receive the payments and benefits set forth in Section 7.1 herein in lieu of those set forth in this Section 6.6.

The Executive's right to terminate employment for Good Reason shall not be affected by the Executive's incapacity due to physical or mental illness. The Executive's continued employment shall not

constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason herein.

#### **Article 7. Change in Control**

**7.1 Employment Terminations in Connection with a Change in Control.** In the event of a Qualifying Termination (as defined below) within six (6) full calendar months prior to the effective date of a Change in Control, or within two years following the effective date of a Change in Control, then in lieu of all other benefits provided to the Executive under the provisions of this Agreement (other than the first sentence of Section 4.4 herein and without derogation of his rights to receive vested benefits under the Company's Amended 1982 Long Term Incentive Plan and the plan or plans described in Section 4.3 herein), the Company shall pay to the Executive and provide him with the following severance benefits (hereinafter referred to as the "Severance Benefits"):

- (a) An amount equal to three (3) times the highest rate of the Executive's annualized Base Salary rate in effect at any time up to and including the effective date of termination;
- (b) An amount equal to three (3) times the greater of: (i) the Executive's average annual bonus earned over the three (3) fiscal years prior to the Change in Control (whether or not deferred); or (ii) the Executive's target bonus established for the fiscal year in which the Executive's effective date of termination occurs;
- (c) An amount equal to the Executive's unpaid Base Salary and accrued vacation pay through the effective date of termination;
- (d) A continuation of the welfare benefits of medical insurance, dental insurance, and life insurance for three (3) full years after the effective date of termination. These benefits shall be provided to the Executive at the same premium cost, and at the same coverage level, as in effect as of the Executive's effective date of termination. However, in the event the premium cost and/or level of coverage shall change for all employees of the Company, the cost and/or coverage level, likewise, shall change for the Executive in a corresponding manner.

The continuation of these welfare benefits shall be discontinued prior to the end of the three (3) year period in the event the Executive has available substantially similar benefits from a subsequent employer, as determined by the Company's Board of Directors or the Board's designee.

- (e) A lump-sum cash payment of the actuarial present value equivalent of the aggregate benefits accrued by the Executive as of the effective date of termination under the terms of any and all supplemental retirement plans in which the Executive participates (subject to the provisions of the second sentence of Section 4.4 herein). For this purpose, such benefits shall be calculated under the assumption that the Executive's employment continued following the effective date of termination for three (3) full years (i.e., three (3) additional years of age and service credits shall be added); provided, however, that for purposes of determining "final average pay" under such programs, the Executive's actual pay history as of the effective date of termination shall be used.

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- (f) A lump-sum cash payment of the entire balance of the Executive's compensation which has been deferred under the Company's nonqualified deferred compensation plan(s) together with all interest that has been credited with respect to such deferred compensation balance.

For purposes of this Article 7, a Qualifying Termination shall mean any termination of the Executive's employment other than: (1) by the Company for Cause (as provided in Section 6.5 herein); (2) by reason of death, Disability (as provided in Section 6.2 herein), or voluntary retirement; provided, however, that a termination which qualifies as a retirement and which occurs within the thirty (30) day period described in clause (3) of this Section 7.1 below will be deemed to be a Qualifying Termination); or (3) by the Executive without Good Reason (as provided in Section 6.6 herein, but specifically excluding voluntary terminations within the period beginning on the first anniversary of the effective date of the Change in Control and ending thirty (30) days after such date—i.e., any voluntary termination by the Executive within such period shall be deemed to be a Qualifying Termination).

## **7.2 Definition of "Change in Control."**

A Change in Control of the Company shall be deemed to have occurred as of the first day any one or more of the following conditions shall have been satisfied:

- (a) Any individual, corporation (other than the Company), partnership, trust, association, pool, syndicate, or any other entity or any group of persons acting in concert becomes the beneficial owner, as that concept is defined in Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, of securities of the Company possessing twenty percent (20%) or more of the voting power for the election of directors of the Company;
- (b) There shall be consummated any consolidation, merger, or other business combination involving the Company or the securities of the Company in which holders of voting securities of the Company immediately prior to such consummation own, as a group, immediately after such consummation, voting securities of the Company (or, if the Company does not survive such transaction, voting securities of the corporation surviving such transaction) having less than sixty percent (60%) of the total voting power in an election of directors of the Company (or such other surviving corporation);
- (c) During any period of two (2) consecutive years, individuals who at the beginning of such period constitute the directors of the Company cease for any reason to constitute at least a majority thereof unless the election, or the nomination for election by the Company's shareholders, of each new director of the Company was approved by a vote of at least two-thirds (2/3) of the directors of the Company then still in office who were directors of the Company at the beginning of any such period; or
- (d) There shall be consummated any sale, lease, exchange, or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of the Company (on a consolidated basis) to a party which is not controlled by or under common control with the Company.

**7.3 Excise Tax Equalization Payment.** In the event that the Executive becomes entitled to Severance Benefits or any other payment or benefit under this Agreement, or under any other agreement with or plan of the Company (in the aggregate, the "Total Payments"), if any of the Total Payments will be subject to the tax (the "Excise Tax") imposed by Section 4999 of the Code (or any similar tax that may hereafter be imposed), the Company shall pay to the Executive in cash an additional amount (the "Gross-Up Payment") such that the net amount retained by the Executive after deduction of any Excise Tax upon the Total Payments and any Federal, state and local income tax and Excise Tax upon the Gross-Up Payment provided for by this Section 7.3 (including FICA and FUTA), shall be equal to the Total Payments. Such payment shall be made by the Company to the Executive as soon as practical following the effective date of termination, but in no event beyond thirty (30) days from such date.

**7.4 Tax Computation.** For purposes of determining whether any of the Total Payments will be subject to the Excise Tax and the amounts of such Excise Tax:

- (a) Any other payments or benefits received or to be received by the Executive in connection with a Change in Control of the Company or the Executive's termination of employment (whether pursuant to the terms of this Agreement or any other plan, arrangement, or agreement with the Company, or with any person (which shall have the meaning set forth in Section 3(a)(9) of the Securities Exchange Act of 1934, including a "group" as defined in Section 13(d) therein) whose actions result in a Change in Control of the Company or any person affiliated with the Company or such persons) shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "excess parachute payments" within the meaning of Section 280G(b)(1) shall be treated as subject to the Excise Tax, unless in the opinion of tax counsel as supported by the Company's independent auditors and acceptable to the Executive, such other payments or benefits (in whole or in part) do not constitute parachute payments, or unless such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) of the Code in excess of the base amount within the meaning of Section 280G(b)(3) of the Code, or are otherwise not subject to the Excise Tax;
- (b) The amount of the Total Payments which shall be treated as subject to the Excise Tax shall be equal to the lesser of: (i) the total amount of the Total Payments; or (ii) the amount of excess parachute payments within the meaning of Section 280G(b)(1) (after applying clause (a) above); and
- (c) The value of any noncash benefits or any deferred payment or benefit shall be determined by the Company's independent auditors in accordance with the principles of Sections 280G(d)(3) and (4) of the Code.

For purposes of determining the amount of the Gross-Up Payment, the Executive shall be deemed to pay Federal income taxes at the highest marginal rate of Federal income taxation in the calendar year in which the Gross-Up Payment is to be made, and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Executive's residence on the effective date of termination, net of the maximum reduction in Federal income taxes which could be obtained from deduction of such state and local taxes.

**7.5 Subsequent Recalculation.** In the event the Internal Revenue Service adjusts the computation of the Company under Section 7.4 herein so that the Executive did not receive the greatest net benefit, the Company shall reimburse the Executive for the full amount necessary to make the Executive whole, plus a market rate of interest, as determined by the Committee.

**Article 8. Outplacement Assistance**

Following a Qualifying Termination (as defined in Section 7.1 herein) the Executive shall be reimbursed by the Company for the costs of all outplacement services obtained by the Executive; provided, however, that the total reimbursement shall be limited to an amount equal to fifteen percent (15%) of the Executive's Base Salary as of the effective date of termination.

**Article 9. Noncompetition**

**9.1 Prohibition on Competition.** Without the prior written consent of the Company, during the term of this Agreement, and for twelve (12) months following the expiration or other termination of this Agreement the Executive shall not, as an employee or an officer, engage directly or indirectly in any business or enterprise which is "in competition" with the Company or its successors or assigns. For purposes of this Agreement, a business or enterprise will be deemed to be "in competition" if it is engaged in any significant business activity of the Company or its subsidiaries within the state (or states, if changed from time to time) within which, during the two (2) years immediately preceding such termination of employment, the Executive has been principally engaged in business for the Company or its subsidiaries.

However the Executive shall be allowed to purchase and hold for investment less than three percent (3%) of the shares of any corporation whose shares are regularly traded on a national securities exchange or in the over-the-counter market.

**9.2 Disclosure of Information.** The Executive recognizes that he has access to and knowledge of certain confidential and proprietary information of the Company which is essential to the performance of his duties under this Agreement. The Executive will not, during or after the term of his employment by the Company, in whole or in part, disclose such information to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever, nor shall he make use of any such information for his own purposes.

**9.3 Covenants Regarding Other Employees.** During the term of this Agreement, and for a period of twenty four (24) months following the expiration of this Agreement, the Executive agrees not to attempt to induce any employee of the Company to terminate his or her employment with the Company, to accept employment with any competitor of the Company, or to interfere in a similar manner with the business of the Company.

**Article 10. Assignment**

**10.1 Assignment by Company.** This Agreement may and shall be assigned or transferred to, and shall be binding upon and shall inure to the benefit of, any successor of the Company, and any such successor shall be deemed substituted for all purposes for the "Company" under the terms of this Agreement. As used in this Agreement, the term "successor" shall mean any person, firm, corporation, or business entity which at any time, whether by merger, purchase, or otherwise, acquires all or substantially all of the assets



or the business of the Company. Notwithstanding such assignment, the Company shall remain, with such successor, jointly and severally liable for all its obligations hereunder.

Failure of the Company to obtain the agreement of any successor to be bound by the terms of this Agreement prior to the effectiveness of any such succession shall be a breach of this Agreement, and shall immediately entitle the Executive to compensation from the Company in the same amount and on the same terms as the Executive would be entitled in the event of a termination of employment for Good Reason within two (2) years after a Change in Control, as provided in Article 7 herein. Except as herein provided, this Agreement may not otherwise be assigned by the Company.

**10.2 Assignment by Executive.** The services to be provided by the Executive to the Company hereunder are personal to the Executive, and the Executive's duties may not be assigned by the Executive; provided, however that this Agreement shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, and administrators, successors, heirs, distributees, devisees, and legatees. If the Executive dies while any amounts payable to the Executive hereunder remain outstanding, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to the Executive's devisee, legatee, or other designee or, in the absence of such designee, to the Executive's estate.

#### **Article 11. Dispute Resolution and Notice**

**11.1 Dispute Resolution.** The Executive shall have the right and option to elect to have any good faith dispute or controversy arising under or in connection with this Agreement settled by litigation or by arbitration.

If arbitration is selected, such proceeding shall be conducted before a panel of three (3) arbitrators sitting in a location selected by the Executive within fifty (50) miles from the location of his principal place of employment, in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the award of the arbitrators in any court having competent jurisdiction.

**11.2 Notice.** Any notices, requests, demands, or other communications provided for by this Agreement shall be sufficient if in writing and if sent by registered or certified mail to the Executive at the last address he has filed in writing with the Company or, in the case of the Company, at its principal offices.

#### **Article 12. Miscellaneous**

**12.1 Entire Agreement.** This Agreement supersedes any prior agreements or understandings, oral or written, between the parties hereto, with respect to the subject matter hereof, and constitutes the entire agreement of the parties with respect thereto. Without limiting the generality of the foregoing sentence, this Agreement completely replaces and supersedes any and all prior employment agreements entered into by and between the Company and the Executive, and all amendments thereto, in their entirety.

**12.2 Modification.** This Agreement shall not be varied, altered, modified, canceled, changed, or in any way amended except by mutual agreement of the parties in a written instrument executed by the parties hereto or their legal representatives.

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**12.3 Severability.** In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

**12.4 Counterparts.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement.

**12.5 Tax Withholding.** The Company may withhold from any benefits payable under this Agreement all Federal, state, city, or other taxes as may be required pursuant to any law or governmental regulation or ruling.

**12.6 Beneficiaries.** The Executive may designate one or more persons or entities as the primary and/or contingent beneficiaries of any amounts to be received under this Agreement. Such designation must be in the form of a signed writing acceptable to the Board or the Board's designee. The Executive may make or change such designation at any time.

**12.7 Payment Obligation Absolute.** The Company's obligation to make the payments and the arrangement provided for herein shall be absolute and unconditional, and shall not be affected by any circumstances, including, without limitation, any offset, counterclaim, recoupment, defense, or other right which the Company may have against the Executive or anyone else. All amounts payable by the Company hereunder shall be paid without notice or demand. Each and every payment made hereunder by the Company shall be final, and the Company shall not seek to recover all or any part of such payment from the Executive or from whomsoever may be entitled thereto, for any reasons whatsoever.

The Executive shall not be obligated to seek other employment in mitigation of the amounts payable or arrangements made under any provision of this Agreement, and the obtaining of any such other employment shall in no event effect any reduction of the Company's obligations to make the payments and arrangements required to be made under this Agreement, except to the extent provided in Section 7.1(d) herein.

**12.8 Contractual Rights to Benefits.** This Agreement establishes and vests in the Executive a contractual right to the benefits to which he is entitled hereunder. However, nothing herein contained shall require or be deemed to require, or prohibit or be deemed to prohibit, the Company to segregate, earmark, or otherwise set aside any funds or other assets, in trust or otherwise, to provide for any payments to be made or required hereunder.

**12.9 Payment of Legal Fees.** To the extent permitted by law, the Company shall pay all legal fees, costs of arbitration and litigation, prejudgment interest, and other expenses incurred in good faith by the Executive as a result of the Company's refusal to provide the benefits to which the Executive becomes entitled under this Agreement, or as a result of the Company's contesting the validity, enforceability, or interpretation of this Agreement, or as a result of any conflict between the parties pertaining to this Agreement.

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**Article 13. Governing Law**

To the extent not preempted by Federal law, the provisions of this Agreement shall be construed and enforced in accordance with the laws of the state of Missouri.

IN WITNESS WHEREOF, the Executive and the Company have executed this Agreement, pursuant to Compensation Committee approval and ratification by the Board of Directors, as of the Effective Date.

**Boatmen's Bancshares, Inc.**

By: /s/[authorized officer]

**Executive:**

/s/ Gregory L. Curl

Charles J. Cooley  
Principal Corporate Personnel Officer

**NationsBank**

NationsBank Corporation  
Charlotte, NC 28255-0013  
704/386-5340

CONFIDENTIAL

September 26, 1996

Mr. Gregory L. Curl  
Vice Chairman  
Boatmen's Bancshares, Inc.  
One Boatmen's Plaza  
800 Market Street  
Post Office Box 236  
St. Louis, Missouri 63166-0236

Dear Mr. Curl:

This letter confirms our agreement regarding your terms of employment with NationsBank following the merger of NationsBank and Boatmen's Bancshares, Inc. As you know, we anticipate the closing of the merger will be completed in January 1997. The terms of your employment outlined below will become effective upon the closing of the merger.

Base Salary; Annual Incentive. Your initial annual base salary will be \$600,000. Your base salary will be reviewed periodically and may be increased (but not decreased) in the discretion of the Compensation Committee of the Board of Directors. You will also be entitled to receive an annual incentive. The amount of your incentive will not be less than \$300,000 per year for the years 1997 through 1999 and will be commensurate with the bonuses of other executives with substantially similar levels of responsibility.

Restricted Stock Award. Upon the closing of the merger, you will be awarded 50,000 shares of restricted NationsBank common stock pursuant to the NationsBank Key Employee Stock Plan. The award of restricted stock will be an exempt acquisition under Section 16(b) of the Securities Exchange Act of 1934. You will become vested in the restricted stock in accordance with the following schedule so long as you are employed with NationsBank on the following dates:

<u>Vesting Date</u>	<u>Shares Vested</u>
January 1, 1998	15,000
January 1, 1999	15,000
January 1, 2000	20,000

Supplemental Executive Retirement Plan. You will be entitled to participate in the NationsBank Supplemental Executive Retirement Plan (the "NationsBank SERP"). The NationsBank SERP has a target retirement benefit of 60% of your final five year average compensation offset by any defined benefit pension benefits received by you from any other sources, including the Boatmen's Retirement Plan for Employees, the Boatmen's Supplemental Retirement Plan, the NationsBank Pension Plan, the NationsBank Supplemental Retirement Plan, the retirement income plan of any of your previous employers under which you have a vested accrued benefit and Social Security (in each case other than Social Security, excluding any pension benefits attributable to your own employee contributions). The NationsBank SERP also provides a surviving spouse's benefit equal to 75% of your benefit. You will receive credit for your service and compensation with Boatmen's for purposes of determining your NationsBank SERP benefit. Your accrued benefits under the Boatmen's Retirement Plan for Employees and the Boatmen's Supplemental Retirement Plan as of the effective date of the merger will not be reduced, and the methods of payment available to you under those plans will be preserved.

Other Benefits. You will be entitled to receive other employee benefits commensurate with those provided to other senior executives of NationsBank.

In accordance with the provisions of your Employment Agreement with Boatmen's Bancshares, Inc. dated January 30, 1996 (the "Employment Agreement"), subject to the merger becoming effective, NationsBank agrees to be bound by the terms of, and to assume the obligations of the "Company" under, the Employment Agreement (including the obligations of the Company under Article 7 of the Employment

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Agreement) upon the effective date of the merger. Your new position will be Vice Chairman - Corporate Development, reporting directly to the Chief Executive Officer, and serving on the Executive Management Committee. In addition, NationsBank agrees that the contemplated merger of Boatmen's and NationsBank, if consummated, constitutes a Change in Control within the meaning of the Employment Agreement. Further, NationsBank will not apply the provisions of Section 4.11 of the NationsBank SERP or Section 14.2 of the NationsBank Key Employee Stock Plan (or any similar provisions contained therein) to reduce any amounts payable to you under this letter agreement or the Employment Agreement unless and until it receives your written consent to such a reduction.

Please confirm that the terms of your employment outlined above accurately reflect our agreement by signing both copies of this letter. You should keep one copy of this letter with your important papers and return the other signed copy to me.

Sincerely,

/s/ C. J. Cooley

C. J. Cooley

Acknowledged and Agreed To:

/s/ Gregory L. Curl

Gregory L. Curl

May 7, 2001

Gregory Curl  
NCI-007-57-06  
Charlotte, NC

Dear Greg,

This letter confirms our commitment to you concerning your Supplemental Executive Retirement Plan and Employment Agreement dated January 30, 1996. You are currently a participant in the Bank of America Supplemental Executive Retirement Plan (SERP). Attached is an illustration showing your benefit under this plan. Under the terms of this plan you are vested in the retirement benefit when you reach age 55 with 15 years of service.

We agree that if your employment is terminated for any reason other than cause prior to the date you become vested (September 1, 2003); we will provide you with the benefit you have earned that would be payable at age 55 upon your termination. If your termination is for cause as defined in Section 6.5 of your employment agreement your SERP benefit continues to be forfeitable under the plan's provisions.

Your Employment Agreement dated January 30, 1996 continues to be in effect. Under the terms of this agreement you are eligible to receive a severance benefit of 1 year of your current base salary plus 1 year continuation of health and welfare benefits if you are terminated for any reason other than cause or voluntarily terminate your employment. Based on your current age and service, you meet the eligibility requirements for retirement under the medical and stock programs. As you would now qualify for benefits under the Retiree Medical Plan we agree that the healthcare continuation provision no longer applies. All stock awards and stock options will automatically be fully vested upon your termination. All other aspects of the agreement continue to apply and we agree benefits provided under Article 7 (Change In Control) are not applicable at this time.

If you agree that this letter correctly outlines our commitment to you, please sign and return one copy to me.

/s/ James H. Hance, Jr.

James H. Hance, Jr.

cc: Charles Loring

Agreed and Accepted:

/s/ Gregory Curl

\_\_\_\_\_  
Gregory Curl

\_\_\_\_\_  
May 15, 2001

Date

**BANK OF AMERICA CORPORATION  
EQUITY INCENTIVE PLAN**

Amended and Restated Effective as of January 1, 2008

**1. Purpose:**

The Corporation established this Plan effective January 1, 2002 for the purpose of determining for certain key associates the portion of incentive compensation to be awarded in the form of Restricted Stock Shares or Restricted Stock Units under the Stock Plan. By awarding a portion of a key associate's incentive compensation in the form of Restricted Stock Shares or Restricted Stock Units which become earned and payable over time, the Corporation intends to induce the associate to remain employed by the Corporation and its Subsidiaries and to further align the interests of the associate with the Corporation's stockholders. This amendment and restatement of the Plan is effective for awards granted after December 31, 2008.

**2. Definitions:**

For purposes of the Plan, the following terms shall have the following meanings

“Associate” means a common law employee of the Corporation or one of its Subsidiaries who is identified as an employee in the personnel records of the Corporation or the applicable Subsidiary.

“Cause” shall be defined as that term is defined in an Associate's offer letter or other applicable employment agreement; or, if there is no such definition, “Cause” means a termination of an Associate's employment with the Corporation and its Subsidiaries if it occurs in conjunction with a determination by the Associate's employer that the Associate has (i) committed an act of fraud or dishonesty in the course of the Associate's employment; (ii) been convicted of (or plead no contest with respect to) a crime constituting a felony; (iii) committed an act or omission which causes the Associate or the Corporation or its Subsidiaries to be in violation of federal or state securities laws, rules or regulations, and/or the rules of any exchange or association of which the Corporation or its Subsidiaries is a member, including statutory disqualification; (iv) failed to perform the Associate's job function(s), which the employer views as being material to the Associate's position and the overall business of the Corporation and its Subsidiaries under circumstances where such failure is detrimental to the Corporation or any Subsidiary; (v) materially breached any written policy applicable to Associates including, but not limited to, the Bank of America Corporation Code of Ethics and General Policy on Insider Trading; or (vi) made an unauthorized disclosure of any confidential or proprietary information of the Corporation or its Subsidiaries or has committed any other material violation of the Corporation's written policy regarding Confidential and Proprietary Information.

“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.

“Common Stock” means the common stock of the Corporation.



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“Competition” means, with respect to an Associate, the Associate being engaged, directly or indirectly, whether as a shareholder, partner, owner, director, officer, employee, consultant, agent, or otherwise, with a business entity that is designated by the Corporation as a “Competitive Business” as of the date of the Associate’s termination of employment with the Corporation and its Subsidiaries. The Corporation shall communicate such list to each affected Associate.

“Corporation” means Bank of America Corporation, and its successors and assigns.

“Covered Associate” means an Associate who is employed in either (i) job band 1 or 2, (ii) a legacy Global Corporate and Investment Banking Group business unit or GCIB Risk (excluding Global Commercial Banking Risk Management and Credit Services), (iii) the Corporation’s Global Wealth and Investment Management Group or (iv) any other group of Associates as the Plan Administrator may determine from time to time; provided, however, that (i) an Associate shall not be a Covered Associate for a Plan Year unless the Associate satisfies any other eligibility requirements set forth on the applicable Schedule attached to the Plan and (ii) the term “Covered Associate” shall not include any “Insider” or “Named Executive Officer” as defined under the Stock Plan; and provided, further, however, that for purposes of the Special Award, “Covered Associate” means any “Key Associate” as defined under the Stock Plan. The Plan Administrator shall make all determinations as to whether an Associate is a Covered Associate for a Plan Year. In that regard, the Plan Administrator in its sole and exclusive discretion may determine to exclude an Associate (or group of Associates) from being considered a Covered Associate with respect to a Covered Incentive at any time prior to the applicable Grant Date. Notwithstanding any provision herein to the contrary, a Covered Associate shall not include any Associate eligible to participate in the Columbia Management Group Mutual Fund Units Plan.

“Covered Incentive” means, with respect to a Covered Associate, any incentive award determined pursuant to any incentive compensation plan of the Corporation approved for purposes of this Plan by the Plan Administrator. Covered Incentives may be determined annually, quarterly, or on such other basis as provided by the applicable plan. Notwithstanding the foregoing, to the extent permitted by applicable law, no amount shall be considered a Covered Incentive that is payable after the date of the Covered Associate’s termination of employment with Corporation and its Subsidiaries (including without limitation any amounts constituting severance payments).

“Effective Date” means the effective date of the Plan: January 1, 2002.

“Fair Market Value” of a share of Common Stock means the closing price on the relevant date of a share of Common Stock 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 Plan Administrator; provided, however, that if the shares are misquoted or omitted by the selected publication(s), the Plan Administrator shall directly solicit the information from officials of the stock exchanges or from other informed independent market sources.

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“Global Compensation, Benefits and HR Services Executive” means the Global Compensation, Benefits and HR Services Executive of the Corporation, or the individual serving in the functionally equivalent position if applicable from time to time (or any permitted delegate pursuant to Section 3).

“Grant Date” means the date that Restricted Stock Shares or Restricted Stock Units are awarded to a Covered Associate pursuant to the Plan for Covered Incentives earned for a calendar year, which date shall be February 15 of the following calendar year, or if that February 15 is not a business day, the next preceding business day.

“Plan Administrator” means the Global Compensation, Benefits and HR Services Executive.

“Principal Amount” means the portion of a Covered Associate’s Covered Incentive to be awarded as Restricted Stock Shares or Restricted Stock Units as determined under Section 4 below and the applicable schedule attached to the Plan.

“Restricted Stock Share” means a share of “Restricted Stock” awarded under, and within the meaning of, the Stock Plan.

“Restricted Stock Unit” means a “Restricted Stock Unit” awarded under, and within the meaning of, the Stock Plan.

“Retirement” means, for an Associate working outside the United States (other than a United States Associate on global assignment), an Associate’s termination of employment with the Corporation and its Subsidiaries (other than due to the Associate’s death or disability but excluding for Cause) as of the date of the Associate’s eligibility for retirement under the local program.

“Rule of 60” means, for an Associate working in the United States or a United States Associate on global assignment, as of the date of the Associate’s termination of employment with the Corporation and its Subsidiaries the Associate has (i) completed at least ten (10) years of “Vesting Service” under the tax-qualified Pension Plan sponsored by the Corporation in which the Associate participates and (ii) attained a combined age and years of “Vesting Service” equal to at least sixty (60).

“Special Award” means an award of Restricted Stock Shares or Restricted Stock Units under the Special Award Addendum attached to the Plan.

“Stock Plan” means the Bank of America Corporation 2003 Key Associate Stock Plan, as the same may be in effect from time to time, or any successor plan thereto.

“Subsidiary” means a “Subsidiary” as defined under the Stock Plan.

**3. Administration:**

The Plan Administrator shall be responsible for administering the Plan. The Plan Administrator shall have all of the powers necessary to enable it to properly carry out its duties under the Plan. Not in limitation of the foregoing, the Plan Administrator shall have the power to construe and interpret the Plan and to determine all questions that shall arise thereunder. The Plan Administrator shall have such other and further specified duties, powers, authority and discretion as are elsewhere in the Plan either expressly or by necessary implication conferred upon it. The Plan Administrator may appoint such agents as it may deem necessary for the effective performance of its duties, and may delegate to such agents such powers and duties as the Plan Administrator may deem expedient or appropriate that are not inconsistent with the intent of the Plan. The decision of the Plan Administrator upon all matters within its scope of authority shall be final and conclusive on all persons, except to the extent otherwise provided by law.

**4. Operation:**

This Plan shall apply to any Covered Incentive of a Covered Associate determined for performance periods beginning on or after the Effective Date. For any such Covered Incentive, a portion shall be awarded in cash and a portion shall be awarded as Restricted Stock Shares or Restricted Stock Units on the applicable Grant Date and earned over time thereafter in accordance with the following provisions:

- (a) The Plan Administrator shall determine from time to time whether awards to particular Covered Associates or groups of Covered Associates under the Plan shall be in the form of Restricted Stock Shares or Restricted Stock Units.
- (b) The Principal Amount for a Covered Associate to be awarded as Restricted Stock Shares or Restricted Stock Units shall be determined pursuant to the applicable schedule attached hereto. The Plan Administrator shall make all determinations as to which schedule applies to a particular Covered Associate with respect to any Covered Incentive (for example, in connection with a Covered Associate who transfers jobs among business units covered by different schedules).
- (c) For purposes of applying the applicable Principal Amount schedules to Covered Incentives determined more frequently than annually, the following provisions shall apply:
  - (i) the amount of all such Covered Incentives for a calendar year shall be aggregated for purposes of applying the Principal Amount formula under the applicable schedule for that calendar year;
  - (ii) the Plan Administrator shall determine the appropriate methodology for accruing a portion of each such Covered Incentive within the calendar year for purposes of applying the applicable Principal Amount formula at the end of the calendar year; and

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- (iii) if the Covered Associate terminates employment with the Corporation and its Subsidiaries prior to the applicable Grant Date, any such amounts that were previously accrued during the calendar year shall be paid to the Covered Associate in cash (less applicable payroll and withholding taxes) as soon as administratively practicable after termination of employment, except that in the case of termination by the Covered Associate's employer for Cause or termination by the Covered Associate (other than Retirement), such accruals shall be forfeited as of the date of termination.
  - (d) The number of Restricted Stock Shares or Restricted Stock Units to be awarded to a Covered Associate shall equal the applicable Principal Amount determined under subparagraph (b) above divided by the average Fair Market Value of a share of Common Stock for the five consecutive trading days ending on the applicable Grant Date.
  - (e) The number of Restricted Stock Units determined in accordance with subparagraph (d) above shall be awarded under the Stock Plan to the Covered Associate and evidenced by an award agreement. Subject to the determination of the Plan Administrator, the award agreement shall include the following provisions:
    - (i) Unless otherwise provided by the award agreement, the Restricted Stock Units shall be earned and payable in three equal annual installments beginning on the first anniversary of the Grant Date.
    - (ii) Any unearned Restricted Stock Units shall become earned immediately upon the Covered Associate's death, "Disability" (as defined under the Stock Plan), or termination of employment by the Corporation and its Subsidiaries without Cause (including, but not limited to, termination due to workforce reduction, job elimination or divestiture). For a Covered Associate working outside the United States, any unearned Restricted Stock Units shall also become earned immediately upon (x) the Covered Associate's Retirement (for a Covered Associate working outside the United States other than a United States Associate on global assignment) or (y) termination of employment by the Covered Associate after having met the Rule of 60 (for a Covered Associate who is a United States Associate on global assignment).
    - (iii) Any unearned Restricted Stock Units shall be immediately forfeited as of the employment termination date in the event of either (A) termination of employment by the Covered Associate's employer for Cause or (B) termination of employment by the Covered Associate prior to (x) the Covered Associate having met the Rule of 60 (for a Covered Associate working in the United States or a United States Associate on global assignment) or (y) the Covered Associate's eligibility for Retirement (for a Covered Associate working outside the United States other than a United States Associate on global assignment).

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- (iv) Except in the case of termination of employment due to death, to the extent that Restricted Stock Units become earned as described in this subsection (c), they shall become payable as follows unless otherwise provided by the award agreement: (A) to a Covered Associate working inside the United States who has met the Rule of 60 (or will meet the Rule of 60 prior to the third anniversary of the Grant Date), in accordance with the schedule set forth in Section 4(e)(i) above and (B) to a Covered Associate working inside the United States who has not met the Rule of 60 (and will not meet the Rule of 60 prior to the third anniversary of the Grant Date), as soon as administratively possible following termination of employment. To the extent that Restricted Stock Units become earned as a result of a termination of employment due to death, they shall become payable as soon as administratively possible following termination of employment.
  - (v) For a Covered Associate working inside the United States, in the event of termination of employment by the Covered Associate after the Covered Associate has met the Rule of 60, any unearned Restricted Stock Units shall continue to become earned and payable in accordance with the schedule described in subparagraph (i) above, provided that (A) the Covered Associate does not engage in Competition during such period and (B) prior to each scheduled payment date, the Covered Associate provides the Corporation with a written certification that the Covered Associate has not engaged in Competition. To be effective, such certification must be provided on such form, at such time and pursuant to such procedures as the Plan Administrator shall establish from time to time. If the Corporation determines in its reasonable business judgment that the Covered Associate has failed to satisfy either of the foregoing requirements, then any unearned Restricted Stock Units shall be immediately forfeited as of the date of such determination. In addition, from time to time after having attained the Rule of 60, the Corporation may require the Covered Associate to further certify that the Covered Associate is not engaging in Competition, and if the Covered Associate fails to fully cooperate with any such requirement the Corporation may determine that the Covered Associate is engaging in Competition.
  - (vi) Restricted Stock Units shall include dividend equivalents providing economic rights substantially similar to cash dividends on Restricted Stock Shares as set forth in the applicable award agreement.
- (f) The number of Restricted Stock Shares determined in accordance with subparagraph (d) above shall be awarded under the Stock Plan to the Covered Associate and evidenced by an award agreement. Subject to the determination of the Plan Administrator, the award agreement shall include the following provisions:

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- (i) Unless otherwise provided by the award agreement, the Restricted Stock Shares shall be earned and payable in three equal annual installments beginning on the first anniversary of the Grant Date.
  - (ii) Any unearned Restricted Stock Shares shall become earned and payable immediately upon the Covered Associate's death, "Disability" (as defined under the Stock Plan), or termination of employment by the Corporation and its Subsidiaries without Cause (including, but not limited to, termination due to workforce reduction, job elimination or divestiture).
  - (iii) Any unearned Restricted Stock Shares shall be immediately forfeited as of the employment termination date in the event of either (A) termination of employment by the Covered Associate's employer for Cause or (B) termination of employment by the Covered Associate.
  - (iv) Cash dividends on unearned Restricted Stock Shares shall either be payable to the Covered Associate as soon as administratively practicable following the applicable dividend payment date or shall be accrued and payable as the award becomes earned and payable, as set forth in the applicable award agreement.
- (g) For a Covered Associate working inside the United States, if and to the extent Restricted Stock Units become earned and payable, they shall be paid to the Covered Associate by delivery of one (1) share of Common Stock for each Restricted Stock Unit. For a Covered Associate working outside the United States, if and to the extent Restricted Stock Units become earned and payable, they shall be payable in either shares of Common Stock or cash as provided in the applicable award agreement.
- (h) Notwithstanding any provision herein to the contrary, for awards of Restricted Stock Shares or Restricted Stock Units to Covered Associates working outside the United States, 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 Covered Associates covered by the Plan are located, the Plan Administrator shall have the power and authority to (i) determine which Covered Associates working outside the United States are eligible to participate in the Plan, (ii) modify the terms and conditions of awards of Restricted Stock Shares or Restricted Stock Units made to such Covered Associates and (iii) establish subplans and modified terms and procedures to the extent such actions may be necessary or advisable.
- (i) Notwithstanding any provision herein to the contrary, the Plan Administrator may modify the percentages set forth in the schedules referenced in subparagraph (b) above or modify the definition of Covered Incentive for a Covered Associate or group of Covered Associates for a given period of time.
- (j) The Plan Administrator shall determine from time to time if, and to what extent, the portion of a Covered Incentive awarded as Restricted Stock Shares or

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Restricted Stock Units under the Plan shall be taken into account under the other benefit plans of the Corporation and its Subsidiaries.

- (k) Notwithstanding any provision herein to the contrary, the Plan Administrator may determine from time to time that awards to particular Covered Associates or groups of Covered Associates under the Plan shall be in the form of long-term cash awards or other long-term equity awards in lieu of Restricted Stock Shares and Restricted Stock Units with such vesting and other terms and conditions as set forth in the applicable award agreement.
- (l) All awards of Restricted Stock Shares or Restricted Stock Units under the Plan shall be subject to approval by the Compensation Committee of the Board of Directors of the Corporation to the extent required by the Stock Plan.

**5. Amendment, Modification and Termination of the Plan:**

The Plan Administrator shall have the right and power at any time and from time to time to amend the Plan in whole or in part and at any time to terminate the Plan; provided, however, that no such amendment or termination shall adversely affect any award of Restricted Stock Shares or Restricted Stock Units granted before the effective date of such amendment or termination without the consent of the affected Covered Associate.

**6. Applicable Law:**

The Plan shall be construed, administered, regulated and governed in all respects under and by the laws of the United States to the extent applicable, and to the extent such laws are not applicable, by the laws of the state of Delaware.

**7. Miscellaneous:**

A Covered Associate's rights and interests under the Plan may not be assigned or transferred by the Covered Associate. Nothing contained herein shall be deemed to create a trust of any kind or any fiduciary relationship between the Corporation and any Covered Associate. The Plan shall be binding on the Corporation and any successor in interest of the Corporation. The Plan is intended to comply with Code Section 409A, to the extent applicable. Notwithstanding any provision of the Plan to the contrary, the Plan shall be interpreted, operated and administered consistent with this intent. In that regard, and notwithstanding any provision of the Plan to the contrary, the Corporation reserves the right to amend the Plan or any award granted pursuant to the Plan, without the consent of any affected Covered Associate, to the extent deemed necessary or appropriate for purposes of maintaining compliance with Code Section 409A and the regulations promulgated thereunder.

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IN WITNESS WHEREOF, this instrument has been executed by an authorized officer of the Corporation.

BANK OF AMERICA CORPORATION

By: /s/ Mark S. Behnke  
Mark S. Behnke  
Global Compensation, Benefits and  
HR Services Executive



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**BANK OF AMERICA CORPORATION  
EQUITY INCENTIVE PLAN**

**SCHEDULE 1**

Principal Amount for Job Bands 1 and 2 and  
Global Wealth and Investment Management Group Associates

This Schedule applies to an Associate who, for a Plan Year, is employed in either (i) job band 1 or 2 (including an Associate who is employed in job band 1 or 2 in a business unit otherwise covered by Schedule 2) or (ii) the Global Wealth and Investment-Management Group, and who receives a Covered Incentive award for the Plan Year of at least \$100,000. The Principal Amount for such a Covered Associate shall equal the sum of (A) 10% of the portion of the Covered Incentive that is less than or equal to \$250,000, (B) 20% of the portion of the Covered Incentive that is greater than \$250,000 but less than \$500,000, (C) 30% of the portion of the Covered Incentive that is greater than or equal to \$500,000 but less than \$1,000,000, and (D) 35% of the portion of the Covered Incentive that is greater than or equal to \$1,000,000. Notwithstanding the foregoing, for select band 1 associates designated as "key employees" for a Plan Year, the Principal Amount shall include 75% of the portion of the Covered Incentive that is greater than \$5,000,000.

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**BANK OF AMERICA CORPORATION  
EQUITY INCENTIVE PLAN**

**SCHEDULE 2**

Principal Amount for GCIB

The Principal Amount for a Covered Associate who is employed in a legacy Global Corporate and Investment Banking Group business unit or GCIB Risk (excluding Global Commercial Banking Risk Management and Credit Services), in either case who is not in job band 1 or 2, shall equal the sum of (A) 20% of the portion of the Covered Incentive that is greater than \$250,000 but less than \$500,000, (B) 30% of the portion of the Covered Incentive that is greater than or equal to \$500,000 but less than \$1,000,000, and (C) 35% of the portion of the Covered Incentive that is greater than or equal to \$1,000,000. Notwithstanding the foregoing, for a Covered Incentive for a Plan Year that is greater than \$250,000 but less than \$275,000, the Principal Amount shall be \$5,000.

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**BANK OF AMERICA CORPORATION  
EQUITY INCENTIVE PLAN**

**SPECIAL AWARD ADDENDUM**

This Special Award Addendum (the "Addendum") shall apply to any Covered Incentive of a Covered Associate determined for performance periods beginning on or after January 1, 2008, other than the portion of any such Covered Incentive that is a Principal Amount for purposes of Section 4 of the Plan.

Notwithstanding any provisions of the Plan to the contrary, for any Covered Incentive subject to this Addendum, the Plan Administrator may determine, in its sole and exclusive discretion, to award all or any portion of such Covered Incentive in the form of an award of Restricted Stock Shares or Restricted Stock Units (any such award, a "Special Award").

Each Special Award shall be subject to the following provisions:

- (a) If and to the extent that the Plan Administrator determines to award all or a portion of the Covered Incentive in the form of a Special Award, the whole number of Restricted Stock Shares or Restricted Stock Units constituting such Special Award shall be determined by dividing the dollar value of the portion of the Covered Incentive to be delivered in the form of a Special Award by the average Fair Market Value of a share of Common Stock for the five consecutive trading days ending on the applicable Grant Date.
- (b) The Plan Administrator, in its sole and exclusive discretion, shall determine (1) whether a Special Award shall be in the form of Restricted Stock Shares or Restricted Stock Units, (2) whether the number of shares subject to the Special Award shall be increased by a ratio (i.e., a "premium") and if so the amount of the ratio, and (3) all of the other terms and conditions of the Special Award, including without limitation all vesting and forfeiture provisions and the treatment of dividends or dividend equivalents prior to vesting.
- (c) Any Special Award shall be made under and in accordance with the terms of the Stock Plan shall be evidenced by an appropriate award agreement and except to the extent expressly provided otherwise in the award agreement shall be subject to the terms of the Plan.
- (d) Notwithstanding any provision herein to the contrary, the Plan Administrator may determine from time to time that Special Awards to particular Covered Associates or groups of Covered Associates under the Plan shall be in the form of long-term cash awards or other long-term equity awards in lieu of Restricted Stock Shares and Restricted Stock Units with such vesting and other terms and conditions as set forth in the applicable award agreement.

**MERRILL LYNCH & CO., INC.**  
**LONG-TERM INCENTIVE COMPENSATION PLAN**  
**(amended as of January 1, 2009)**

MERRILL LYNCH & CO., INC.

LONG-TERM INCENTIVE COMPENSATION PLAN

ARTICLE I - GENERAL

**Section 1.1 Purpose.**

The purposes of the Long-Term Incentive Compensation Plan (the “**Plan**”) are: (a) to enhance the growth and profitability of Merrill Lynch & Co., Inc., a Delaware corporation (“**ML & Co.**”), and its subsidiaries by providing the incentive of long-term rewards to key employees who are capable of having a significant impact on the performance of ML & Co. and its subsidiaries; (b) to attract and retain employees of outstanding competence and ability; (c) to encourage long-term stock ownership by employees; and (d) to further the identity of interests of such employees with those of stockholders of ML & Co.

**Section 1.2 Definitions.**

For the purpose of the Plan, the following terms shall have the meanings indicated:

- (a) “**Board of Directors**” or “**Board**” shall mean the Board of Directors of ML & Co.
- (b) “**Code**” shall mean the Internal Revenue Code of 1986, as amended, including any successor law thereto.
- (c) “**Company**” shall mean ML & Co. and any corporation, partnership, or other organization of which ML & Co. owns or controls, directly or indirectly, not less than 50% of the total combined voting power of all classes of stock or other equity interests. For purposes of this Plan, the terms “ML & Co.” and “Company” shall include any successor thereto.
- (d) “**Committee**” shall mean the Management Development and Compensation Committee of the Board of Directors, or its functional successor or any other Board committee that has been designated by the Board of Directors to administer the Plan, or the Board of Directors. The Committee shall be constituted so that at all relevant times it meets the then applicable requirements of Rule 16b-3 (or its successor) promulgated under the Securities Exchange Act of 1934, as amended.
- (e) “**Common Stock**” shall mean the Common Stock, par value \$1.33 1/3 per share, of ML & Co. and a “**share of Common Stock**” shall mean one share of Common Stock together with, for so long as Rights are outstanding, one Right (whether trading with the Common Stock or separately).
- (f) “**Disability**,” unless otherwise provided herein, shall mean any physical or mental condition that, in the opinion of the Head of Human Resources of Merrill Lynch & Co., Inc. (or his or her functional successor), renders an employee incapable of engaging in any employment or occupation for which he is suited by reason of education or training.

(g) **“Fair Market Value”** of shares of Common Stock on any given date(s) shall be: (a) the mean of the high and low sales prices on the New York Stock Exchange—Composite Tape of such shares on the date(s) in question, or, if the shares of Common Stock shall not have been traded on any such date(s), the mean of the high and low sales prices on the New York Stock Exchange—Composite Tape on the first day prior thereto on which the shares of Common Stock were so traded; or (b) if the shares of Common Stock are not traded on the New York Stock Exchange, such other amount as may be determined by the Committee by any fair and reasonable means.

**“Fair Market Value”** of any Other ML & Co. Security on any given date(s) shall be: (a) the mean of the high and low sales prices of such Other ML & Co. Security on the principal securities exchange on which such Security is traded on the date(s) in question or, if such Other ML & Co. Security shall not have been traded on any such exchange on such date(s), the mean of the high and low sales prices on such exchange on the first day prior thereto on which such Other ML & Co. Security was so traded; or (b) if the Other ML & Co. Security is not publicly traded on a securities exchange, such other amount as may be determined by the Committee by any fair and reasonable means.

(h) **“Junior Preferred Stock”** shall mean ML & Co.’s Series A Junior Preferred Stock, par value \$1.00 per share.

(i) **“Key Employee”** means any employee who has been designated by ML & Co. as one of the 50 highest paid employees (based on W-2 income) as of the most recently completed fiscal year.

(j) **“Other ML & Co. Security”** shall mean a financial instrument issued pursuant to Article VI.

(k) **“Participant”** shall mean any employee who has met the eligibility requirements set forth in Section 1.5 hereof and to whom a grant has been made and is outstanding under the Plan.

(l) **“Performance Period”** shall mean, in relation to Performance Shares or Performance Units, any period, for which performance objectives have been established, of not less than one nor more than ten consecutive ML & Co. fiscal years, commencing with the first day of the fiscal year in which such Performance Shares or Performance Units were granted.

(m) **“Performance Share”** shall mean a right, granted to a Participant pursuant to Article II, that will be paid out as a share of Common Stock.

(n) **“Performance Unit”** shall mean a right, granted to a Participant pursuant to Article II, to receive an amount equal to the Fair Market Value of one share of Common Stock in cash.

(o) **“Restricted Period”** shall mean, (i) in relation to shares of Common Stock receivable in payment for Performance Shares, the period beginning at the end of the applicable Performance Period during which restrictions on the transferability of such shares of Common Stock are in effect; and (ii) in relation to Restricted Shares or Restricted Units, the period

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beginning with the first day of the month in which Restricted Shares or Restricted Units are granted, during which restrictions on the transferability of such Restricted Shares or Restricted Units are in effect, which shall not be of shorter duration than the Vesting Period applicable to the same Restricted Shares or Restricted Units.

(p) **“Restricted Share”** shall mean a share of Common Stock, granted to a Participant pursuant to Article III, subject to the restrictions set forth in Section 3.3 hereof.

(q) **“Restricted Unit”** shall mean the right, granted to a Participant pursuant to Article III, as provided by the Committee at the time of grant to receive either: (1) an amount in cash equal to the Fair Market Value of one share of Common Stock, or (2) one share of Common Stock.

(r) **“Retirement”** shall mean the cessation of employment with the Company (1) on or after (A) having completed at least five (5) years of service and (B) reaching any age, that, when added to service with the Company (in each case, expressed as completed years and completed months), equals at least 45; or (2) as the result of (A) becoming employed by an unconsolidated affiliate of the Company (as specified by the Head of Human Resources) or (B) being a part of a divestiture or spin-off designated by the Head of Human Resources as eligible, provided that, in each case, termination of employment by the Company for cause, as defined in the Company’s grant document, shall not qualify as Retirement.

(s) **“Rights”** means the Rights to Purchase Units of Junior Preferred Stock issued pursuant to the Rights Agreement.

(t) **“Rights Agreement”** means the Rights Agreement dated as of December 16, 1987 between ML & Co. and Manufacturers Hanover Trust Company, Rights Agent, as amended from time to time.

(w) **“Stock Appreciation Right”** shall mean a right, granted to a Participant pursuant to Article V, to receive, in cash or shares of Common Stock, an amount equal to the increase in Fair Market Value, over a specified period of time, of a specified number of shares of Common Stock.

(x) **“Stock Option”** shall mean a right, granted to a Participant pursuant to Article IV, to purchase, before a specified date and at a specified price, a specified number of shares of Common Stock. Stock Options may be **“Incentive Stock Options,”** which meet the definition of such in Section 422A of the Code, or **“Nonqualified Stock Options,”** which do not meet such definition.

(y) **“Vesting Period”** shall mean, in relation to Restricted Shares or Restricted Units, any period of not less than six (6) months beginning with the first day of the month in which the grant of the applicable Restricted Shares or Restricted Units is effective, during which such Restricted Shares or Restricted Units may be forfeited if the Participant terminates employment.

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**Section 1.3 Administration.**

(a) The Plan shall be administered by the Committee. Subject to the provisions of the Plan, the Committee shall have sole and complete authority to: (i) subject to Section 1.5 hereof, select Participants after receiving the recommendations of the management of the Company; (ii) determine the number of Performance Shares, Performance Units, Restricted Shares, Restricted Units, Stock Appreciation Rights, or Other ML & Co. Securities subject to each grant; (iii) determine the number of shares of Common Stock subject to each Stock Option grant; (iv) determine the time or times when grants are to be made or are to be effective; (v) determine the terms and conditions subject to which grants may be made; (vi) extend the term of any Stock Option; (vii) provide at the time of grant that all or any portion of any Stock Option shall be canceled upon the Participant's exercise of any Stock Appreciation Rights; (viii) prescribe the form or forms of the instruments evidencing any grants made hereunder, provided that such forms are consistent with the Plan; (ix) adopt, amend, and rescind such rules and regulations as, in its opinion, may be advisable for the administration of the Plan; (x) construe and interpret the Plan and all rules, regulations, and instruments utilized thereunder; and (xi) make all determinations deemed advisable or necessary for the administration of the Plan. All determinations by the Committee shall be final and binding.

(b) The Committee shall act in accordance with the procedures established for a Committee under ML & Co.'s Certificate of Incorporation and By-Laws or under any resolution of the Board.

**Section 1.4 Shares Subject to the Plan.**

The total number of shares of Common Stock that may be distributed under the Plan shall be 320,000,000 (whether granted as Restricted Shares or reserved for distribution upon grant of Restricted Units, Performance Shares, Stock Options, Stock Appreciation Rights (to the extent they may be paid out in Common Stock), or Other ML & Co. Securities), subject to adjustment as provided in Article VII hereof. Shares of Common Stock distributed under the Plan may be treasury shares or authorized but unissued shares. To the extent that awards of Other ML & Co. Securities are convertible into Common Stock or are otherwise equity securities (or convertible into equity securities) of ML & Co., they shall be subject to the limitation expressed above on the number of shares of Common Stock that can be awarded under the Plan. Any shares of Common Stock that have been granted as Restricted Shares or that have been reserved for distribution in payment for Restricted Units or Performance Shares but are later forfeited or for any other reason are not payable under the Plan may again be made the subject of grants under the Plan. If any Stock Option, Stock Appreciation Right, or Other ML & Co. Security granted under the Plan expires or terminates, or any Restricted Unit or Stock Appreciation Right is paid out in cash, the underlying shares of Common Stock may again be made the subject of grants under the Plan. Units payable in cash that are later forfeited or for any reason are not payable under the Plan may again be the subject of grants under the Plan. Effective January 1, 2009, no further grants shall be made under the Plan.



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**Section 1.5 Eligibility and Participation.**

Participation in the Plan shall be limited to officers (who may also be members of the Board of Directors) and other salaried, key employees of the Company or any affiliate of the Company designated by the Committee.

**ARTICLE II - PROVISIONS APPLICABLE TO PERFORMANCE SHARES AND PERFORMANCE UNITS.**

**Section 2.1 Performance Periods and Restricted Periods.**

The Committee shall establish Performance Periods applicable to Performance Shares and Performance Units and may establish Restricted Periods applicable to Performance Shares, at its discretion. Each such Performance Period shall commence with the beginning of a fiscal year in which the Performance Shares and Performance Units are granted and have a duration of not less than one nor more than ten consecutive fiscal years. Each such Restricted Period shall commence with the end of the Performance Period established for such Performance Shares and shall end on such date as may be determined by the Committee at the time of grant. There shall be no limitation on the number of Performance Periods or Restricted Periods established by the Committee, and more than one Performance Period may encompass the same fiscal year.

**Section 2.2 Performance Objectives.**

At any time before or during a Performance Period, the Committee shall establish one or more performance objectives for such Performance Period, provided that such performance objectives shall be established prior to the grant of any Performance Shares or Performance Units with respect to such Period. Performance objectives shall be based on one or more measures such as return on stockholders' equity, earnings, or any other standard deemed relevant by the Committee, measured internally or relative to other organizations and before or after extraordinary items, as may be determined by the Committee; provided, however, that any such measure shall include all accruals for grants made under the Plan and for all other employee benefit plans of the Company. The Committee may, in its discretion, establish performance objectives for the Company as a whole or for only that part of the Company in which a given Participant is involved, or a combination thereof. In establishing the performance objective or objectives for a Performance Period, the Committee shall determine both a minimum performance level, below which no Performance Shares or Performance Units shall be payable, and a full performance level, at or above which 100% of the Performance Shares or Performance Units shall be payable. In addition, the Committee may, in its discretion, establish intermediate levels at which given proportions of the Performance Shares or Performance Units shall be payable. Such performance objectives shall not thereafter be changed except as set forth in Sections 2.5 and 2.6 and Article VII hereof.

**Section 2.3 Grants of Performance Shares and Performance Units.**

The Committee may select employees to become Participants subject to the provisions of Section 1.5 hereof and grant Performance Shares or Performance Units to such Participants at any time prior to or during the first fiscal year of a Performance Period. Grants shall be deemed to have been made as of the beginning of the first fiscal year of the Performance Period. Before

making grants, the Committee must receive the recommendations of the management of the Company, which will take into account such factors as level of responsibility, current and past performance, and performance potential. Subject to the provisions of Section 2.7 hereof, a grant of Performance Shares or Performance Units shall be effective for the entire applicable Performance Period and may not be revoked. Each grant to a Participant shall be evidenced by a written instrument stating the number of Performance Shares or Performance Units granted, the Performance Period, the performance objective or objectives, the proportion of payments for performance between the minimum and full performance levels, if any, the Restricted Periods and restrictions applicable to shares of Common Stock receivable in payment for Performance Shares, and any other terms, conditions, and rights with respect to such grant. At the time of any grant of Performance Shares, there shall be reserved out of the number of shares of Common Stock authorized for distribution under the Plan a number of shares equal to the number of Performance Shares so granted.

**Section 2.4 Rights and Benefits During Performance Period.**

The Committee may provide that, during a Performance Period, a Participant shall be paid cash amounts, with respect to each Performance Share or Performance Unit held by such Participant, in the same manner, at the same time, and in the same amount paid, as a dividend on a share of Common Stock.

**Section 2.5 Adjustment with respect to Performance Shares and Performance Units.**

Any other provision of the Plan to the contrary notwithstanding, the Committee may at any time adjust performance objectives (up or down) and minimum or full performance levels (and any intermediate levels and proportion of payments related thereto), adjust the way performance objectives are measured, or shorten any Performance Period or Restricted Period, if it determines that conditions, including but not limited to, changes in the economy, changes in competitive conditions, changes in laws or governmental regulations, changes in generally accepted accounting principles, changes in the Company's accounting policies, acquisitions or dispositions, or the occurrence of other unusual, unforeseen, or extraordinary events, so warrant.

**Section 2.6 Payment of Performance Shares and Performance Units.**

Within 90 days after the end of any Performance Period, the Company shall determine the extent to which performance objectives established by the Committee pursuant to Section 2.2 hereof for such Performance Period have been met during such Performance Period and the resultant extent to which Performance Shares or Performance Units granted for such Performance Period are payable. Payment for Performance Shares and Performance Units shall be as follows:

- (a) Performance Shares:
  - (i) If a Restricted Period has been established in relation to the Performance Shares:

(A) At the end of the applicable Performance Period, one or more certificates representing the number of shares of Common Stock equal to the number of Performance Shares payable shall be held by the Company for the employee until the end of the Restricted Period.

(B) At the end of the applicable Restricted Period, all restrictions applicable to the shares of Common Stock, and other securities or property received with respect to such shares, held by the Company for the accounts of recipients of Performance Shares granted in relation to such Restricted Period shall lapse, and one or more stock certificates for such shares of Common Stock and securities, free of the restrictions, shall be delivered in book-entry or certificated form to the Participant, or such shares and securities shall be credited to a brokerage account if the Participant so directs, as soon as practicable but in no event later than 45 days after the end of the Restricted Period, provided that, in the event that the end of the Restricted Period is fewer than 45 days prior to the end of the Company's fiscal year, the payment of the shares shall be made in the first 45 days of the next succeeding fiscal year.

(ii) If a Restricted Period has not been established in relation to the Performance Shares, at the end of the applicable Performance Period, one or more stock certificates representing the number of shares of Common Stock equal to the number of Performance Shares payable, free of restrictions, shall be registered in the name of the Participant and delivered in book-entry or certificated form to the Participant, or such shares shall be credited to a brokerage account if the Participant so directs, as soon as practicable but in no event later than 45 days after the end of the Restricted Period, provided that, in the event that the end of the Restricted Period is fewer than 45 days prior to the end of the Company's fiscal year, the payment of the shares shall be made in the first 45 days of the next succeeding fiscal year.

(b) Performance Units: At the end of the applicable Performance Period, a Participant shall be paid a cash amount equal to the number of Performance Units payable, times the mean of the Fair Market Value of Common Stock during the second calendar month following the end of the Performance Period, as soon as practicable but in no event later than 45 days after the end of the Performance Period, provided that, in the event that the end of the Performance Period is fewer than 45 days prior to the end of the Company's fiscal year, the payment shall be made in the first 45 days of the next succeeding fiscal year, unless some other payment date or Restricted Period is established by the Committee at the time of grant, in which case, payment to the Participant shall be made as soon as practicable but in no event later than 45 days after the applicable date, provided that, in the event that the applicable date is fewer than 45 days prior to the end of the Company's fiscal year, the payment shall be made in the first 45 days of next succeeding fiscal year.

**Section 2.7 Termination of Employment.**

**Section 2.7 Termination of Employment.**

- (a) Prior to the end of a Performance Period:

(i) Death: If a Participant ceases to be an employee of the Company prior to the end of a Performance Period by reason of death, any outstanding Performance Shares or Performance Units with respect to such Participant shall become payable and be paid to such Participant's beneficiary or estate, as the case may be, as soon as practicable (subject to receipt of proper documentation) in the manner set forth in Sections 2.6(a)(ii) and 2.6(b) hereof, respectively. In determining the extent to which performance objectives established for such Performance Period have been met and the resultant extent to which Performance Shares or Performance Units are payable, the Performance Period shall be deemed to end as of the end of the fiscal year in which the Participant's death occurred, payment shall be made as soon as practicable (but in no event later than 45 days) following the end of such fiscal year.

(iii) Other Terminations: If a Participant ceases to be an employee prior to the end of a Performance Period for any reason other than death, the Participant shall immediately forfeit all Performance Shares and Performance Units previously granted under the Plan and all right to receive any payment for such Performance Shares and Performance Units. The Committee may, however, direct payment in accordance with the provisions of Section 2.6 hereof for a number of Performance Shares or Performance Units, as it may determine, granted under the Plan to a Participant whose employment has so terminated (but not exceeding the number of Performance Shares or Performance Units that could have been payable had the Participant remained an employee) if it finds that the circumstances in the particular case so warrant. For purposes of the preceding sentence, the Performance Period over which performance objectives shall be measured shall be deemed to end as of the end of the fiscal year in which termination occurred, and payment shall be made as soon as practicable (but in no event later than 45 days) following the end of such fiscal year.

(b) After the end of a Performance Period but prior to the end of a Restricted Period:

(i) Death, Disability, or Retirement: If a Participant ceases to be an employee of the Company by reason of death or in the case of the Disability or Retirement of a Participant, the Restricted Period shall be deemed to have ended (subject, in the case of Retirement, to receipt of appropriate documentation from the Participant regarding the Participant's competitive status) and shares held by the Company shall be paid as soon as practicable following the end of the Restricted Period, in the manner set forth in Section 2.6(a)(i)(B).

(ii) Other Terminations: Terminations of employment for any reason other than death after the end of a Performance Period but prior to the end of a Restricted Period shall not have any effect on the Restricted Period, unless the Committee, in its sole discretion, finds that the circumstances so warrant and determines that the Restricted Period shall end on an earlier date as determined by the Committee and that shares held by the Company shall be paid as soon as practicable following such earlier date in the manner set forth in Section 2.6(a)(i)(B).

(c) Except as otherwise provided in this Section 2.7, termination of employment after the end of a Performance Period but before the payment of Performance Shares or Performance Units relating to such Performance Period shall not affect the amount, if any, to be paid pursuant to Section 2.6 hereof. Approved leaves of absence of one year or less shall not be deemed to be terminations of employment under this Section 2.7. Leaves of absence of more than one year will

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be deemed to be terminations of employment under this Section 2.7, unless the Committee determines otherwise.

### **ARTICLE III - PROVISIONS APPLICABLE TO RESTRICTED SHARES AND RESTRICTED UNITS.**

#### **Section 3.1 Vesting Periods and Restricted Periods.**

The Committee shall establish one or more Vesting Periods applicable to Restricted Shares and Restricted Units and one or more Restricted Periods applicable to Restricted Shares and Restricted Units, at its discretion. Each such Vesting Period shall have a duration of not less than six (6) months, measured from the first day of the month in which the grant of the applicable Restricted Shares or Restricted Units is effective. Each such Restricted Period shall have a duration of six (6) or more consecutive months, measured from the first day of the month in which the grant of the applicable Restricted Shares or Restricted Unit is effective, but in no event shall any Restricted Period be of shorter duration than the Vesting Period applicable to such Restricted Share or Restricted Unit.

#### **Section 3.2 Grants of Restricted Shares and Restricted Units.**

The Committee may select employees to become Participants (subject to the provisions of Section 1.5 hereof) and grant Restricted Shares or Restricted Units to such Participants at any time. Before making grants, the Committee must receive the recommendations of the management of the Company, which will take into account such factors as level of responsibility, current and past performance, and performance potential.

Subject to the provisions of Section 3.7 hereof, a grant of Restricted Shares or Restricted Units shall be effective for the entire applicable Vesting and Restricted Periods and may not be revoked. Each grant to a Participant shall be evidenced by a written instrument stating the number of Restricted Shares or Restricted Units granted, the Vesting Period, the Restricted Period, the restrictions applicable to such Restricted Shares or Restricted Units, the nature and terms of payment of consideration, if any, and the consequences of forfeiture that will apply to such Restricted Shares and Restricted Units, and any other terms, conditions, and rights with respect to such grant.

#### **Section 3.3 Rights and Restrictions Governing Restricted Shares.**

At the time of grant of Restricted Shares, subject to the receipt by the Company of any applicable consideration for such Restricted Shares, one or more certificates representing the appropriate number of shares of Common Stock granted to a Participant shall be registered either in his or her name or for his or her benefit either individually or collectively with others, but shall be held by the Company for the account of the Participant. The Participant shall have all rights of a holder as to such shares of Common Stock, including the right to receive dividends, to exercise Rights, and to vote such Common Stock and any securities issued upon exercise of Rights, subject to the following restrictions: (a) the Participant shall not be entitled to delivery of certificates representing such shares of Common Stock and any other such securities until the expiration of the Restricted Period; (b) except as provided in Section 3.9, none of the Restricted Shares may be sold, transferred, assigned, pledged, or otherwise encumbered or disposed of

during the Restricted Period; and (c) all of the Restricted Shares shall be forfeited and all rights of the Participant to such Restricted Shares shall terminate without further obligation on the part of the Company unless the Participant remains in the continuous employment of the Company for the entire Vesting Period in relation to which such Restricted Shares were granted, except as otherwise provided in by Section 3.7 hereof. Any shares of Common Stock or other securities or property received with respect to such shares shall be subject to the same restrictions as such Restricted Shares.

**Section 3.4 Rights Governing Restricted Units.**

During the Vesting Period, or, if longer, the Restricted Period, for Restricted Units, a Participant may be paid, with respect to each such Restricted Unit, cash amounts in the same manner, at the same time, and in the same amount paid, as a dividend on a share of Common Stock. Except as otherwise provided in Section 3.7 hereof, the Restricted Units shall be forfeited and all rights of the Participant to the Restricted Units shall terminate without further obligation on the part of the Company unless the Participant remains in the continuous employment of the Company for the entire Vesting Period.

**Section 3.5 Adjustment with respect to Restricted Shares and Restricted Units.**

Any other provision of the Plan to the contrary notwithstanding, the Committee may at any time shorten any Vesting Period or Restricted Period, if it determines that conditions, including but not limited to, changes in the economy, changes in competitive conditions, changes in laws or governmental regulations, changes in generally accepted accounting principles, changes in the Company's accounting policies, acquisitions or dispositions, or the occurrence of other unusual, unforeseen, or extraordinary events, so warrant.

**Section 3.6 Payment of Restricted Shares and Restricted Units.**

(a) **Restricted Shares:** At the end of the Vesting Period (or if longer, the Restricted Period), all restrictions contained in the grant of Restricted Shares and in the Plan shall lapse, and the appropriate number of shares of Common Stock (net of shares withheld at the end of the Vesting Period under Section 3.6(c)), shall be delivered to the Participant or his or her beneficiary or estate, as the case may be, free of restrictions, in book-entry or certificated form or credited to a brokerage account as the Participant or his or her beneficiary or estate, as the case may be, so directs.

(b) **Restricted Units:** At the end of the Vesting Period (or, if longer, the Restricted Period) applicable to a Participant's Restricted Units, there shall be paid to the Participant, or his or her beneficiary or estate, as the case may be, either: (1) an amount in cash equal to the Fair Market Value of one share of Common Stock on the last trading day of the Vesting Period (or, if longer, the Restricted Period), or (2) one share of Common Stock for each Restricted Unit, net of shares withheld by the Company pursuant to Section 3.6(c), free of restrictions. For Restricted Units paid in Common Stock, the appropriate number of shares shall be delivered to the Participant or his or her beneficiary or estate, as the case may be, in book-entry or certificated form or credited to a brokerage account as the Participant or his or her beneficiary or estate, as the case may be, so directs, as soon as practicable but in no event later than 30 days after the end

of the Vesting or Restricted Period, provided that, in the event that the end of such period is fewer than 10 days prior to the end of the Company's fiscal year, the payment of the shares shall be made in the first 10 days of the next succeeding fiscal year.

**Section 3.7 Termination of Employment.**

(a) Prior to the end of a Vesting Period:

(i) Death: If a Participant ceases to be an employee of the Company prior to the end of a Vesting Period by reason of death, all grants of Restricted Shares and Restricted Units granted to such Participant are immediately payable in accordance with their terms (but in no event later than 45 days after receipt of appropriate documentation).

(ii) Disability or Retirement: The Disability or Retirement of a Participant shall not constitute a termination of employment for purposes of this Article III and such Participant shall not forfeit any Restricted Shares or Restricted Units held by him or her, provided that, during the remainder of the applicable Vesting Period, such Participant does not engage in or assist any business that the Committee, in its sole discretion, determines to be in competition with business engaged in by the Company. A Participant who does engage in or assist any business that the Committee, in its sole discretion, determines to be in competition with business engaged in by the Company shall be deemed to have terminated employment subject to the receipt of appropriate documentation from the Participant with respect to the Participant's competitive status.

(iii) Other Terminations: Except as otherwise provided herein, if a Participant ceases to be an employee prior to the end of a Vesting Period for any reason other than death, the Participant shall immediately forfeit all Restricted Shares and Restricted Units previously granted, unless the Committee, in its sole discretion, finds that the circumstances in the particular case so warrant and allows a Participant whose employment has so terminated to retain any or all of the Restricted Shares or Restricted Units granted to such Participant. Notwithstanding the foregoing, with respect to any Participant holding unvested Restricted Shares and/or Restricted Units (x) whose employment is terminated because of a reduction in staff (coded under termination code number 251 or such other code as may be equivalent to or substituted for termination code number 251), and (y) who delivers to the Company and complies with a release of claims he or she may have against the Company or any of its subsidiaries, which will include a prohibition on solicitation of the Company's employees and such other restrictions as the Company may impose (a "Release"), then notwithstanding such termination, Restricted Shares and Restricted Units granted to such Participant shall continue to vest during the Vesting Period and be restricted during the Restricted Period for such grant; provided, however, that in the event of the Employee's death during the relevant Vesting or Restricted Periods the treatment of Restricted Shares and Restricted Units will be determined in accordance with the provisions of Section 3.7(a)(i);

(b) After the end of a Vesting Period but prior to the end of a Restricted Period:

(i) Death, Disability, or Retirement: If a Participant ceases to be an employee of the Company by reason of death, or in the case of the Disability or Retirement of a Participant,

prior to the end of a Restricted Period, all Restricted Shares and Restricted Units granted to such Participant are immediately payable in the manner set forth in Section 3.6.

(ii) **Other Terminations:** Terminations of employment for any reason other than death after the end of a Vesting Period but prior to the end of a Restricted Period shall not have any effect on the Restricted Period, unless (A) the Restricted Period relates to Restricted Units that have been further deferred in which case the Restricted Units shall be paid to the Participant, or (B) the Committee, in its sole discretion, finds that the circumstances so warrant and determines that the Restricted Period shall end on an earlier date as determined by the Committee and, in each case, the applicable Restricted Shares or Restricted Units shall be paid as soon as practicable in the manner set forth in Section 3.6.

Approved leaves of absence of one year or less shall not be deemed to be terminations of employment under this Section 3.7. Leaves of absence of more than one year will be deemed to be terminations of employment under this Section 3.7, unless the Committee determines otherwise.

### **Section 3.8 Limitations on Transfer of Restricted Shares and Restricted Units.**

Restricted Shares and Restricted Units are not transferable by a Participant except by will or the laws of descent and distribution or bequest; provided, however, that the Committee shall have the authority, in its discretion, to grant (or to authorize) that Restricted Shares and Restricted Units may be transferred by the Participant during his or her lifetime to any member of his or her immediate family or to a trust, limited liability corporation, family limited partnership or other equivalent vehicle, established for the exclusive benefit of one or more members of his or her immediate family. A transfer of Restricted Shares or Restricted units will not be permitted unless the Company has received evidence, to its satisfaction, that such transfer does not trigger income or social security taxes or withholding requirements. A transfer of Restricted Shares or Restricted Units may only be effected by the Company at the written request of a Participant and shall become effective only when recorded in the Company's record of outstanding Restricted Shares or Restricted Units. In the event Restricted Shares or Restricted Units are transferred, such Restricted Shares or Restricted Units may not be subsequently transferred by the transferee except by will or the laws of descent and distribution. In the event Restricted Shares or Restricted Units are transferred, such Restricted Shares or Restricted Units shall continue to be governed by and subject to the terms and limitations of the Plan and the relevant grant and remain subject to forfeiture in the event the Participant terminates his or her employment during the Vesting Period as if no transfer had taken place. As used in this Section, "immediate family" shall mean, with respect to any person, any child, stepchild or grandchild, and shall include relationships arising from legal adoption.

## **ARTICLE IV - PROVISIONS APPLICABLE TO STOCK OPTIONS.**

### **Section 4.1 Grants of Stock Options.**

The Committee may select employees to become Participants (subject to Section 1.5 hereof) and grant Stock Options to such Participants at any time; provided, however, that Incentive Stock Options shall be granted within 10 years of the earlier of the date the Plan is



adopted by the Board or approved by the stockholders. Before making grants, the Committee must receive the recommendations of the management of the Company, which will take into account such factors as level of responsibility, current and past performance, and performance potential. Subject to the provisions of the Plan, the Committee shall also determine the number of shares of Common Stock to be covered by each Stock Option. The Committee shall have the authority, in its discretion, to grant "Incentive Stock Options" or "Nonqualified Stock Options," or to grant both types of Stock Options. Furthermore, the Committee may grant a Stock Appreciation Right in connection with a Stock Option, as provided in Article V.

**Section 4.2 Option Documentation.**

Each Stock Option granted under the Plan shall be evidenced by written documentation containing such terms and conditions as the Committee may deem appropriate and are not inconsistent with the provisions of the Plan.

**Section 4.3 Exercise Price.**

The Committee shall establish the exercise price at the time any Stock Option is granted at such amount as the Committee shall determine, except that such exercise price shall not be less than 50% of the Fair Market Value of the underlying shares of Common Stock on the day a Stock Option is granted and that, with respect to an Incentive Stock Option, such exercise price shall not be less than 100% of the Fair Market Value of the underlying shares of Common Stock on the day such Incentive Stock Option is granted. The exercise price will be subject to adjustment in accordance with the provisions of Article VII of the Plan.

**Section 4.4 Exercise of Stock Options.**

(a) Vesting and Exercisability: Stock Options shall become exercisable at such times and in such installments as the Committee may provide at the time of grant. The Committee may also set a Vesting Period for grants of Stock Options. The Committee may also, in its sole discretion, accelerate the time at which a Stock Option or installment may vest or become exercisable. A Stock Option may be exercised at any time from the time first set by the Committee until the close of business on the expiration date of the Stock Option.

(b) Option Period: For each Stock Option granted, the Committee shall specify the period during which the Stock Option may be exercised, provided that no Stock Option shall be exercisable after the expiration of 10 years from the date of grant of such Stock Option.

(c) Exercise in the Event of Termination of Employment:

(i) Death: If a Participant ceases to be an employee of the Company by reason of death prior to: (A) the end of a Vesting Period, (B) the exercise of or (C) or the expiration of Stock Options granted to him or her that remain outstanding on the date of death, such Stock Options may be exercised to the full extent not yet exercised, regardless of whether or not then vested or fully exercisable under the terms of the grant or under the terms of Section 4.4(a) hereof, by his or her estate, beneficiaries or transferees, as the case may be, at any time and from time to time, but in no event after the expiration date of such Stock Option.

(ii) Disability or Retirement: The Disability or Retirement of a Participant shall not constitute a termination of employment for purposes of this Article IV, provided that following Disability or Retirement such Participant does not engage in or assist any business that the Committee, in its sole discretion, determines to be in competition with business engaged in by the Company. A Participant who does engage in or assist any business that the Committee, in its sole discretion, determines to be competition with business engaged in by the Company shall be deemed to have terminated employment. In the case of Incentive Stock Options, Disability shall be as defined in Code Section 22(e)(3).

(iii) Other Terminations: Except as provided herein, if a Participant ceases to be an employee for any reason other than death prior to: (a) the end of the Vesting Period, (b) the exercise of, or (c) the expiration of a Stock Option, then all outstanding Stock Options granted to such Participant, whether in his or her name or in the name of another person as a result of a transfer in accordance with Section 4.4(d), shall expire and be forfeited on a date 30 days following the date of such termination of employment. Notwithstanding the foregoing, with respect to any Participant who holds unvested, unexercised non-qualified Stock Options (x) whose employment is terminated because of a reduction in staff (coded under termination code number 251 or such other code as may be equivalent to or substituted for termination code number 251), and (y) who delivers to the Company and complies with a release of claims he or she may have against the Company or any of its subsidiaries, which will include a prohibition on solicitation of the Company's employees and such other restrictions as the Company may impose (a "Release"), then, notwithstanding such termination, all unvested, unexercised Stock Options shall continue to be and become exercisable in accordance with their terms until a date that is 30 days after the latest date on which any Stock Options granted to such employee have become fully exercisable, but in no event later than the original expiration date of such Stock Option, (the "Exercise End Date"), and may be exercised at any time and from time to time during such period; provided however, that in the event of the Employee's death, during such period, the exercisability of Stock Options will be determined in accordance with the provisions of Section 4.4(c)(i);

In addition, if the Committee, in its sole discretion, finds that the circumstances in the particular case so warrant, it may determine that the Participant, his or her transferee pursuant to Section 4.4(d), or such transferee's estate or beneficiaries, may exercise any such outstanding Stock Option at any time and from time to time after such termination of employment, but in no event after the expiration date of such Stock Option (the "Extended Period").

Approved leaves of absence of one year or less shall not be deemed to be terminations of employment under this Section 4.4(c)(iii). Leaves of absence of more than one year shall be deemed to be terminations of employment under this Section 4.4(c)(iii), unless the Committee determines otherwise.

(d) Limitations on Transferability: Stock Options are not transferable by a Participant except by will or the laws of descent and distribution or bequest and are exercisable during his or her lifetime only by him or her; provided, however, that the Committee shall have the authority, in its discretion, to grant (or to authorize by amendment of an existing grant) Stock Options that may be transferred by the Participant during his or her lifetime to any member of his or her immediate family or to a trust, limited liability corporation, family limited partnership or other

equivalent vehicle, established for the exclusive benefit of one or more members of his or her immediate family. A transfer of a Stock Option pursuant to this subparagraph may only be effected by the Company at the written request of a Participant and shall become effective only when recorded in the Company's record of outstanding Stock Options. In the event a Stock Option is transferred as contemplated in this subparagraph, such Stock Option may not be subsequently transferred by the transferee except by will or the laws of descent and distribution. In the event a Stock Option is transferred as contemplated in this subparagraph, such Stock Option shall continue to be governed by and subject to the terms and limitations of the Plan and the relevant grant, and the transferee shall be entitled to the same rights as the Participant under Articles VII, VIII and X hereof, as if no transfer had taken place. As used in this subparagraph, "immediate family" shall mean, with respect to any person, any child, stepchild or grandchild, and shall include relationships arising from legal adoption.

**Section 4.5 Payment of Purchase Price and Tax Liability Upon Exercise; Delivery of Shares.**

(a) Payment of Purchase Price: The purchase price of the shares as to which a Stock Option is exercised shall be paid to the Company at the time of exercise (i) in cash, (ii) by delivering freely transferable shares of Common Stock already owned by the person exercising the Stock Option having a total real-time market price, at the time and on the date of exercise, equal to the purchase price, (iii) a combination of cash and shares of Common Stock equal in value to the exercise price, or (iv) by such other means as the Committee, in its sole discretion, may determine.

(b) Payment of Taxes: Upon exercise, a Participant may elect to satisfy any federal, state, local, or social security taxes required by law to be withheld that arise as a result of the exercise of a Stock Option by directing the Company to withhold from the shares of Common Stock otherwise deliverable upon the exercise of such Stock Option, such number of shares as shall have a total real-time market price, at the time and on the date of exercise, at least equal to the amount of tax to be withheld.

(c) Delivery of Shares: Upon receipt by the Company of the purchase price, stock certificate(s) for the shares of Common Stock as to which a Stock Option is exercised (net of any shares withheld pursuant to Section 4.5(b) above) shall be delivered to the person in whose name the Stock Option is outstanding or such person's estate or beneficiaries, as the case may be, or such shares shall be credited to a brokerage account or otherwise delivered, in such manner as such person or such person's estate or beneficiaries, as the case may be, may direct.

**Section 4.6 Limitations on Shares of Common Stock Received upon Exercise of Stock Options.**

The aggregate Fair Market Value (determined at the time an Incentive Stock Option is granted) of the shares of Common Stock with respect to which an Incentive Stock Option is exercisable for the first time by a Participant during any calendar year (under all plans of the Company) shall not exceed \$100,000 or such other limit as may be established from time to time under the Code.

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The maximum aggregate number of shares of Common Stock underlying stock options to be granted in any one fiscal year to any individual executive officer, as such term is defined in the regulations promulgated under Section 162(m) of the Internal Revenue Code, shall be 4,000,000 (four million), which number shall be adjusted automatically to give effect to mergers, consolidations, reorganizations, stock dividends, stock splits or combinations, reclassifications, recapitalizations, or distributions to holders of Common Stock (other than cash dividends) including, without limitation, a merger or other reorganization event in which the Common Stock ceases to exist.

**ARTICLE V - PROVISIONS APPLICABLE TO STOCK APPRECIATION RIGHTS.**

**Section 5.1 Grants of Stock Appreciation Rights.**

The Committee may select employees to become Participants (subject to the provisions of Section 1.5 hereof) and grant Stock Appreciation Rights to such Participants at any time. Before making grants, the Committee must receive the recommendations of the management of the Company, which will take into account such factors as level of responsibility, current and past performance, and performance potential. The Committee shall have the authority to grant Stock Appreciation Rights in connection with a Stock Option or independently. The Committee may grant Stock Appreciation Rights in connection with a Stock Option, either at the time of grant or by amendment, in which case each such right shall be subject to the same terms and conditions as the related Stock Option and shall be exercisable only at such times and to such extent as the related Stock Option is exercisable. A Stock Appreciation Right granted in connection with a Stock Option shall entitle the holder to surrender to the Company the related Stock Option unexercised, or any portion thereof, and receive from the Company in exchange therefor an amount equal to the excess of the Fair Market Value of one share of the Common Stock on the day preceding the surrender of such Stock Option over the Stock Option exercise price times the number of shares underlying the Stock Option, or portion thereof, that is surrendered. A Stock Appreciation Right granted independently of a Stock Option shall entitle the holder to receive upon exercise an amount equal to the excess of the Fair Market Value of one share of Common Stock on the day preceding the exercise of the Stock Appreciation Right over the Fair Market Value of one share of Common Stock on the date such Stock Appreciation Right was granted, or such other price determined by the Committee at the time of grant, which shall in no event be less than 50% of the Fair Market Value of one share of Common Stock on the date such Stock Appreciation Right was granted. Stock Appreciation Rights are not transferable by a Participant except by will or the laws of descent and distribution and are exercisable during his or her lifetime only by him or her.

**Section 5.2 Stock Appreciation Rights Granted in Connection with Incentive Stock Options.**

(a) Stock Appreciation Rights granted in connection with Incentive Stock Options must expire no later than the last date the underlying Incentive Stock Option can be exercised.

(b) Such Stock Appreciation Rights may be granted for no more than 100% of the difference between the exercise price of the underlying Incentive Stock Option and the Fair

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Market Value of the Common Stock subject to the underlying Incentive Stock Option at the time the Stock Appreciation Right is exercised.

(c) Such Stock Appreciation Rights are transferable only to the extent and at the same time and under the same conditions as the underlying Incentive Stock Options.

(d) Such Stock Appreciation Rights may be exercised only when the underlying Incentive Stock Options may be exercised.

(e) Such Stock Appreciation Rights may be exercised only when the Fair Market Value of the shares of Common Stock subject to the Incentive Stock Options exceeds the exercise price of the Incentive Stock Options.

**Section 5.3 Payment Upon Exercise of Stock Appreciation Rights.**

The Company's obligation to any Participant exercising a Stock Appreciation Right may be paid in cash or shares of Common Stock, or partly in cash and partly in shares, at the sole discretion of the Committee.

**Section 5.4 Termination of Employment.**

(a) Death: If a Participant ceases to be an employee of the Company prior to the exercise or expiration of a Stock Appreciation Right outstanding in his or her name on the date of death, such Stock Appreciation Right may be exercised to the full extent not yet exercised, regardless of whether or not then fully exercisable under the terms of the grant, by his or her estate or beneficiaries, as the case may be, at any time and from time to time within 12 months after the date of death but in no event after the expiration date of such Stock Appreciation Right.

(b) Disability: The Disability of a Participant shall not constitute a termination of employment for purposes of this Article IV, provided that following the Disability such Participant does not engage in or assist any business that the Committee, in its sole discretion, determines to be in competition with business engaged in by the Company. A Participant who does engage in or assist any business that the Committee, in its sole discretion, determines to be in competition with business engaged in by the Company shall be deemed to have terminated employment.

(c) Retirement: The Retirement of a Participant shall not constitute a termination of employment for purposes of this Article IV, provided that following Retirement such Participant does not engage in or assist any business that the Committee, in its sole discretion, determines to be in competition with business engaged in by the Company, and such Participant may exercise any Stock Appreciation Right outstanding in his or her name at any time and from time to time within 5 years after the date his or her Retirement commenced but in no event after the expiration date of such Stock Appreciation Right. A Participant who does engage in or assist any business that the Committee, in its sole discretion, determines to be in competition with business engaged in by the Company shall be deemed to have terminated employment.

(d) Other Terminations: If a Participant ceases to be an employee prior to the exercise or expiration of a Stock Appreciation Right for any reason other than death, all outstanding Stock

Appreciation Rights granted to such Participant shall expire on the date of such termination of employment, unless the Committee, in its sole discretion, determines that he may exercise any such outstanding Stock Appreciation Right (to the extent that he was entitled to do so at the date of such termination of such employment) at any time and from time to time within up to 5 years after such termination of employment but in no event after the expiration date of such Stock Appreciation Right.

## **ARTICLE VI - PROVISIONS APPLICABLE TO OTHER ML & CO. SECURITIES.**

### **Section 6.1 Grants of Other ML & Co. Securities.**

Subject to the provisions of the Plan and any necessary action by the Board of Directors, the Committee may select employees to become Participants (subject to the provisions of Section 1.5 hereof) and grant to Participants Other ML & Co. Securities or the right or option to purchase Other ML & Co. Securities on such terms and conditions as the Committee shall determine, including, without limitation, the period such rights or options may be exercised, the nature and terms of payment of consideration for such Other ML & Co. Securities, whether such Other ML & Co. Securities shall be subject to any or all of the provisions of Article III of the Plan applicable to Restricted Shares and/or Restricted Units, the consequences of termination of employment, and the terms and conditions, if any, upon which such Other ML & Co. Securities may or must be repurchased by the Company. Before making grants, the Committee must receive the recommendations of the management of the Company, which will take into account such factors as level of responsibility, current and past performance, and performance potential. Each such Other ML & Co. Security shall be issued at a price that will not exceed the Fair Market Value thereof on the date the corresponding right or option is granted. Other ML & Co. Securities may bear interest or pay dividends from such date and at a rate or rates or pursuant to a formula or formulas fixed by the Committee or any necessary action of the Board. Any applicable conversion or exchange rate with respect to Other ML & Co. Securities shall be fixed by, or pursuant to a formula determined by, the Committee or any necessary action of the Board at each date of grant and may be predicated upon the attainment of financial or other performance goals.

### **Section 6.2 Terms and Conditions of Conversion or Exchange.**

Each Other ML & Co. Security may be convertible or exchangeable on such date and within such period of time as the Committee, or the Board if necessary, determines at the time of grant. Other ML & Co. Securities may be convertible into or exchangeable for (i) shares of Preferred Stock of ML & Co. or (ii) other securities of ML & Co. or any present or future subsidiary of ML & Co., whether or not convertible into shares of Common Stock, as the Committee, or the Board if necessary, determines at the time of grant (or at any time prior to the conversion or exchange date).

## **ARTICLE VII - CHANGES IN CAPITALIZATION.**

Any other provision of the Plan to the contrary notwithstanding, if any change shall occur in or affect shares of Common Stock or Performance Units, Restricted Units, Stock Options, Stock Appreciation Rights, or Other ML & Co. Securities on account of a merger, consolidation,

reorganization, stock dividend, stock split or combination, reclassification, recapitalization, or distribution to holders of shares of Common Stock (other than cash dividends) including, without limitation, a merger or other reorganization event in which the shares of Common Stock cease to exist, , then, without any action by the Committee, appropriate adjustments shall be made (1) the maximum number of shares of Common Stock available for distribution under the Plan; (2) the number of shares subject to or reserved for issuance and payable under outstanding Performance Share, Restricted Unit, Restricted Share, and Stock Option grants. In addition, if in the opinion of the Committee, after consultation with the Company's independent public accountants, changes in the Company's accounting policies, acquisitions, divestitures, distributions, or other unusual or extraordinary items have disproportionately and materially affected the value of shares of Common Stock or Performance Units, Restricted Units, Stock Options, Stock Appreciation Rights, or Other ML & Co. Securities, the Committee shall make such adjustments, if any, that it may deem necessary or equitable in the performance objectives for the Performance Periods not yet completed, including the minimum, intermediate, and full performance levels and portion of payments related thereto; and any other terms or provisions of any outstanding grants of Performance Shares, Performance Units, Restricted Shares, Restricted Units, Stock Options, Stock Appreciation Rights, or Other ML & Co. Securities, in order to preserve the full benefits of such grants for the Participants, taking into account inflation, interest rates, and any other factors that the Committee, in its sole discretion, considers relevant. In the event of a change in the presently authorized shares of Common Stock that is limited to a change in the designation thereof or a change of authorized shares with par value into the same number of shares with a different par value or into the same number of shares without par value, the shares resulting from any such change shall be deemed to be shares of Common Stock within the meaning of the Plan. In the event of any other change affecting the shares of Common Stock, Performance Units, Restricted Units, Stock Options, Stock Appreciation Rights, or Other ML & Co. Securities, such adjustment shall be made as may be deemed equitable by the Committee to give proper effect to such event.

#### **ARTICLE VIII - PAYMENTS UPON TERMINATION OF EMPLOYMENT AFTER A CHANGE IN CONTROL.**

##### **Section 8.1 Value of Payments Upon Termination After a Change in Control**

Any other provision of the Plan to the contrary notwithstanding and notwithstanding any election to the contrary previously made by the Participant, in the event a Change in Control shall occur and thereafter the Company shall terminate the Participant's employment without Cause or the Participant shall terminate his or her employment with the Company for Good Reason, the Participant shall be paid the value of his or her Performance Shares, Performance Units, Restricted Shares, Restricted Units, Stock Options, Stock Appreciation Rights, and Other ML & Co. Securities in a lump sum in cash, promptly after termination of his or her employment but, without limiting the foregoing, in no event later than 45 days thereafter, provided that, in the event that at the time of his or her termination, a Participant is a Key Employee, the payment to such Participant shall be delayed until a date that is six months after the date of such Participant's termination. Payments shall be calculated as set forth below:

(a) Performance Shares and Performance Units.

Any payment for Performance Shares and Performance Units pursuant to this Section 8.1(a) shall be calculated by applying performance objectives for any outstanding Performance Shares and Performance Units as if the applicable Performance Period and any applicable Restricted Period had ended on the first day of the month in which the Participant's employment is terminated. The amount of any payment to a Participant pursuant to this Section 8.1(a) shall be reduced by the amount of any payment previously made to the Participant with respect to the Performance Shares and Performance Units, exclusive of ordinary dividend payments, resulting by operation of law from the Change in Control, including, without limitation, payments resulting from a merger pursuant to state law. The value of the Performance Shares and Performance Units payable pursuant to this Section 8.1(a) shall be the amount equal to the number of Performance Shares and Performance Units payable in accordance with the preceding sentence multiplied by the Fair Market Value of a share of Common Stock on the day the Participant's employment is terminated or, if higher, the highest Fair Market Value of a share of the Common Stock on any day during the 90-day period ending on the date of the Change in Control (the "Pre-CIC Value").

(b) Restricted Shares and Restricted Units.

Any payment under this Section 8.1(b) shall be calculated as if all the relevant Vesting and Restricted Periods had been fully completed immediately prior to the date on which the Participant's employment is terminated. The amount of any payment to a Participant pursuant to this Section 8.1(b) shall be reduced by the amount of any payment previously made to the Participant with respect to the Restricted Shares and Restricted Units, exclusive of ordinary dividend payments, resulting by operation of law from the Change in Control, including, without limitation, payments resulting from a merger pursuant to state law. The value of the Participant's Restricted Shares and Restricted Units payable pursuant to this Section 8.1(b) shall be the amount equal to the number of the Restricted Shares and Restricted Units outstanding in a Participant's name multiplied by the Fair Market Value of a share of Common Stock on the day the Participant's employment is terminated or, if higher, the Pre-CIC Value.

(c) Stock Options and Stock Appreciation Rights.

Any payment for Stock Options and Stock Appreciation Rights pursuant to this Section 8.1(c) shall be calculated as if all such Stock Options and Stock Appreciation Rights, regardless of whether or not then fully exercisable under the terms of the grant, became exercisable immediately prior to the date on which the Participant's employment is terminated. The amount of any payment to a Participant pursuant to this Section 8.1(c) shall be reduced by the amount of any payment previously made to a Participant with respect to the Stock Options and Stock Appreciation Rights, exclusive of any ordinary dividend payments, resulting by operation of law from the Change in Control, including, without limitation, payments resulting from a merger pursuant to state law. The value of the Participant's Stock Options and Stock Appreciation Rights payable pursuant to this Section 8.1(c) shall be:

(i) in the case of a Stock Option, for each underlying share of Common Stock, the excess of the Fair Market Value of a share of Common Stock on the day the



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Participant's employment is terminated, over the per share exercise price for such Stock Option;

(ii) in the case of a Stock Appreciation Right granted in tandem with a Stock Option, the Fair Market Value of a share of Common Stock on the day the Participant's employment is terminated, over the Stock Option exercise price; and

(iii) in the case of a Stock Appreciation Right granted independently of a Stock Option, the Fair Market Value of a share of Common Stock on the day the Participant's employment is terminated, over the Fair Market Value of one share of Common Stock on the date such Stock Appreciation Right was granted, or such other price determined by the Committee at the time of grant.

(d) Other ML & Co. Securities.

Any payment for Other ML & Co. Securities under this Section 8.1(d) shall be calculated as if any relevant Vesting or Restricted Periods or other applicable conditions dependent on the passage of time and relating to the exercisability of any right or option to purchase Other ML & Co. Securities, or relating to the full and unconditional ownership of such Other ML & Co. Securities themselves, had been met on the first day of the month in which the Participant's employment is terminated. The amount of any payment to a Participant pursuant to this Section 8.1(d) shall be reduced by the amount of any payment previously made to the Participant with respect to the Other ML & Co. Securities, exclusive of ordinary dividend payments, resulting by operation of law from the Change in Control, including, without limitation, payments resulting from a merger pursuant to state law. The value of the Participant's Other ML & Co. Securities payable pursuant to this Section 8.1(d) shall be

(i) in the case of an option or right to purchase such Other ML & Co. Security, for each underlying Other ML & Co. Security, the excess of the Fair Market Value of such Other ML & Co. Security on the day the Participant's employment is terminated, or, if higher, the Pre-CIC Value, over the exercise price of such option or right; and

(ii) in the case of the Other ML & Co. Security itself (where there is no outstanding option or right relating to such Other ML & Co. Security), the Fair Market Value of the Other ML & Co. Security on the day the Participant's employment is terminated, or, if higher, the Pre-CIC Value.

**Section 8.2 A Change in Control.**

A "**Change in Control**" shall mean a change in control of ML & Co. of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), whether or not the Company is then subject to such reporting requirement; provided, however, that, without limitation, a Change in Control shall be deemed to have occurred if:

(a) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, or any syndicate or group deemed to be a person under Section

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14(d)(2) of the Exchange Act, other than the Company's employee stock ownership plan, is or becomes the "beneficial owner" (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of ML & Co. representing 30% or more of the combined voting power of ML & Co.'s then outstanding securities entitled to vote in the election of directors of ML & Co.;

(b) during any period of two consecutive years (not including any period prior to the Effective Date of this Plan) individuals who at the beginning of such period constituted the Board of Directors and any new directors, whose election by the Board of Directors or nomination for election by the stockholders of ML & Co. was approved by a vote of at least three quarters of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority thereof; or

(c) all or substantially all of the assets of ML & Co. are liquidated or distributed.

**Section 8.3 Effect of Agreement Resulting in Change in Control**

If ML & Co. executes an agreement, the consummation of which would result in the occurrence of a Change in Control as described in Section 8.2, then, with respect to a termination of employment without Cause or for Good Reason occurring after the execution of such agreement (and, if such agreement expires or is terminated prior to consummation, prior to such expiration or termination of such agreement), a Change in Control shall be deemed to have occurred as of the date of the execution of such agreement.

**Section 8.4 Termination for Cause.**

Termination of the Participant's employment by the Company for "**Cause**" shall mean termination upon:

(a) the willful and continued failure by the Participant substantially to perform his or her duties with the Company (other than any such failure resulting from the Participant's incapacity due to physical or mental illness or from the Participant's Retirement or any such actual or anticipated failure resulting from termination by the Participant for Good Reason) after a written demand for substantial performance is delivered to him or her by the Board of Directors, which demand specifically identifies the manner in which the Board of Directors believes that he has not substantially performed his or her duties; or

(b) the willful engaging by the Participant in conduct that is demonstrably and materially injurious to the Company, monetarily or otherwise.

No act or failure to act by the Participant shall be deemed "willful" unless done, or omitted to be done, by the Participant not in good faith and without reasonable belief that his or her action or omission was in the best interest of the Company.

Notwithstanding the foregoing, the Participant shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to him or her a copy of a resolution duly adopted by the affirmative vote of not less than three quarters of the entire

membership of the Board of Directors at a meeting of the Board called and held for such purpose (after reasonable notice to the Participant and an opportunity for him or her, together with counsel, to be heard before the Board of Directors), finding that, in the good faith opinion of the Board of Directors, the Participant was guilty of conduct set forth above in clause (a) or (b) of the first sentence of this Section 8.4 and specifying the particulars thereof in detail.

**Section 8.5 Good Reason.**

“**Good Reason**” shall mean the Participant’s termination of his or her employment with the Company if, without the Participant’s written consent, any of the following circumstances shall occur:

(a) Inconsistent Duties. A meaningful and detrimental alteration in the Participant’s position or in the nature or status of his or her responsibilities (including those as a director of ML & Co., if any) from those in effect immediately prior to the Change in Control;

(b) Reduced Salary or Bonus Opportunity. A reduction by the Company in the Participant’s annual base salary as in effect immediately prior to the Change in Control; a failure by the Company to increase the Participant’s salary at a rate commensurate with that of other key executives of the Company; or a reduction in the Participant’s annual cash bonus below the greater of (i) the annual cash bonus that he received, or to which he was entitled, immediately prior to the Change in Control, or (ii) the average annual cash bonus paid to the Participant by the Company for the three years preceding the year in which the Change in Control occurs;

(c) Relocation. The relocation of the office of the Company where the Participant is employed at the time of the Change in Control (the “CIC Location”) to a location that in his or her good faith assessment is an area not generally considered conducive to maintaining the executive offices of a company such as ML & Co. because of hazardous or undesirable conditions including without limitation a high crime rate or inadequate facilities, or to a location that is more than twenty-five (25) miles away from the CIC Location or the Company’s requiring the Participant to be based more than twenty-five (25) miles away from the CIC Location (except for required travel on the Company’s business to an extent substantially consistent with his or her customary business travel obligations in the ordinary course of business prior to the Change in Control);

(d) Compensation Plans. The failure by the Company to continue in effect any compensation plan in which the Participant participates, including but not limited to this Plan, the Company’s retirement program, Employee Stock Purchase Plan, 1978 Incentive Equity Purchase Plan, Equity Capital Accumulation Plan, Canadian Capital Accumulation Plan, Management Capital Accumulation Plan, limited partnership offerings, cash incentive compensation or any other plans adopted prior to the Change in Control, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan in connection with the Change in Control, or the failure by the Company to continue the Participant’s participation therein on at least as favorable a basis, both in terms of the amount of benefits provided and the level of his or her participation relative to other Participants, as existed immediately prior to the Change in Control;

(e) **Benefits and Perquisites.** The failure of the Company to continue to provide the Participant with benefits at least as favorable as those enjoyed by the Participant under any of the Company's retirement, life insurance, medical, health and accident, disability, deferred compensation or savings plans in which the Participant was participating immediately prior to the Change in Control; the taking of any action by the Company that would directly or indirectly materially reduce any of such benefits or deprive the Participant of any material fringe benefit enjoyed by him or her immediately prior to the Change in Control, including, without limitation, the use of a car, secretary, office space, telephones, expense reimbursement, and club dues; or the failure by the Company to provide the Participant with the number of paid vacation days to which the Participant is entitled on the basis of years of service with the Company in accordance with the Company's normal vacation policy in effect immediately prior to the Change in Control;

(f) **No Assumption by Successor.** The failure of ML & Co. to obtain a satisfactory agreement from any successor to assume and agree to perform a Participant's employment agreement as contemplated thereunder or, if the business of the Company for which his or her services are principally performed is sold at any time after a Change in Control, the purchaser of such business shall fail to agree to provide the Participant with the same or a comparable position, duties, compensation, and benefits as provided to him or her by the Company immediately prior to the Change in Control.

**Section 8.6 Effect on Plan Provisions.**

In the event of a Change in Control, no changes in the Plan, or in any documents evidencing grants of Performance Shares, Performance Units, Restricted Shares, Restricted Units, Stock Options, Stock Appreciation Rights, or Other ML & Co. Securities and no adjustments, determinations or other exercises of discretion by the Committee or the Board of Directors, that were made subsequent to the Change in Control and that would have the effect of diminishing a Participant's rights or his or her payments under the Plan or this Article shall be effective, including, but not limited to, any changes, determinations or other exercises of discretion made to or pursuant to the Plan. Once a Participant has received a payment pursuant to this Article VIII, shares of Common Stock that were reserved for issuance in connection with any Performance Shares, Restricted Shares, Stock Options, or Other ML & Co. Securities for which payment is made shall no longer be reserved and shares of Common Stock that are Restricted Shares or that are restricted and held by the Company pursuant to Section 2.6(a)(i), for which payment has been made, shall no longer be registered in the name of the Participant and shall again be available for grants under the Plan. If the Participant's employment is terminated without Cause or for Good Reason after a Change in Control, any election to defer payment for Performance Shares or Performance Units pursuant to Section 2.8 hereof or Restricted Shares or Restricted Units pursuant to Section 3.8 hereof shall be null and void.

**ARTICLE IX - MISCELLANEOUS.**

**Section 9.1 Designation of Beneficiary.**

A Participant, or the transferee of a Restricted Share, Restricted Unit or Stock Option pursuant to Sections 3.9 or 4.4(d), may designate, in a writing delivered to ML & Co. before his or her death, a person or persons or entity or entities to receive, in the event of his or her death,

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any rights to which he would be entitled under the Plan. A Participant or Restricted Share, Restricted Unit or Stock Option transferee, may also designate an alternate beneficiary to receive payments if the primary beneficiary does not survive the Participant or transferee. A Participant or transferee may designate more than one person or entity as his or her beneficiary or alternate beneficiary, in which case such beneficiaries would receive payments as joint tenants with a right of survivorship. A beneficiary designation made under the Plan will apply to future grants unless be changed or revoked by a Participant or transferee by filing a written or electronic notification of such change or revocation with the Company. If a Participant or Stock Option transferee fails to designate a beneficiary, then his or her estate shall be deemed to be his or her beneficiary.

**Section 9.2 Employment Rights.**

Neither the Plan nor any action taken hereunder shall be construed as giving any employee of the Company the right to become a Participant, and a grant under the Plan shall not be construed as giving any Participant any right to be retained in the employ of the Company.

**Section 9.3 Nontransferability.**

Except as provided in Sections 3.9 and 4.4(d), a Participant's rights under the Plan, including the right to any amounts or shares payable, may not be assigned, pledged, or otherwise transferred except, in the event of a Participant's death, to his or her designated beneficiary or, in the absence of such a designation, by will or the laws of descent and distribution.

**Section 9.4 Withholding.**

The Company shall have the right, before any payment is made or a certificate for any shares is delivered or any shares are credited to any brokerage account, to deduct or withhold from any payment under the Plan any federal, state, local, social security or other taxes, including transfer taxes, required by law to be withheld or to require the Participant or his or her beneficiary or estate, as the case may be, to pay any amount, or the balance of any amount, required to be withheld.

**Section 9.5 Relationship to Other Benefits.**

No payment under the Plan shall be taken into account in determining any benefits under any retirement, group insurance, or other employee benefit plan of the Company. The Plan shall not preclude the stockholders of ML & Co., the Board of Directors or any committee thereof, or the Company from authorizing or approving other employee benefit plans or forms of incentive compensation, nor shall it limit or prevent the continued operation of other incentive compensation plans or other employee benefit plans of the Company or the participation in any such plans by Participants in the Plan.

**Section 9.6 No Trust or Fund Created.**

Neither the Plan nor any grant made hereunder shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company and a Participant or any other person. To the extent that any person acquires a right to receive

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payments from the Company pursuant to a grant under the Plan, such right shall be no greater than the right of any unsecured general creditor of the Company.

**Section 9.7 Expenses.**

The expenses of administering the Plan shall be borne by the Company.

**Section 9.8 Indemnification.**

Service on the Committee shall constitute service as a member of the Board of Directors so that members of the Committee shall be entitled to indemnification and reimbursement as directors of ML & Co. pursuant to its Certificate of Incorporation, By-Laws, or resolutions of its Board of Directors or stockholders.

**Section 9.9 Tax Litigation.**

The Company shall have the right to contest, at its expense, any tax ruling or decision, administrative or judicial, on any issue that is related to the Plan and that the Company believes to be important to Participants in the Plan and to conduct any such contest or any litigation arising therefrom to a final decision.

**ARTICLE X - AMENDMENT AND TERMINATION.**

The Board of Directors or the Committee (but no other committee of the Board of Directors) may modify, amend or terminate the Plan at any time, except that, to the extent then required by applicable law, rule or regulation, approval of the holders of a majority of shares of Common Stock represented in person or by proxy at a meeting of the stockholders will be required to increase the maximum number of shares of Common Stock available for distribution under the Plan (other than increases due to an adjustment in accordance with the Plan). No modification, amendment or termination of the Plan shall have a material adverse effect on the rights of a Participant under a grant previously made to him or her without the consent of such Participant.

**ARTICLE XI - INTERPRETATION.**

**Section 11.1 Governmental and Other Regulations.**

The Plan and any grant hereunder shall be subject to all applicable federal, state or local laws, rules, and regulations and to such approvals by any regulatory or governmental agency that may, in the opinion of the counsel for the Company, be required.

**Section 11.2 Governing Law.**

The Plan shall be construed and its provisions enforced and administered in accordance with the laws of the State of New York applicable to contracts entered into and performed entirely in such State.

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**ARTICLE XII - EFFECTIVE DATE AND STOCKHOLDER APPROVAL.**

The Plan shall not be effective unless or until approved by a majority of the votes cast at a duly held stockholders' meeting at which a quorum representing a majority of all outstanding voting stock is, either in person or by proxy present and voting on the Plan.

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## RESTRICTED UNITS/STOCK OPTIONS

This **Grant Document** sets forth the terms and conditions of your grant of Restricted Units and Stock Options under the Merrill Lynch & Co., Inc. (“**ML&Co.**”) Long-Term Incentive Compensation Plan (the “**Plan**”).

### 1. The Plan.

This grant is made under the Plan, the terms of which are incorporated into this Grant Document. Capitalized terms used in this Grant Document that are not defined shall have the meanings as used or defined in the Plan, which is included in the Prospectus sent to you with this grant. **Merrill Lynch**, as used in the Grant Document, shall mean ML&Co., its subsidiaries and its affiliates. References in this Grant Document to any specific Plan provision shall not be construed as limiting that provision or the applicability of any other Plan provision.

### 2. Grant Conditions.

By accepting this grant, you acknowledge that you understand that the grant is subject to all of the terms and conditions contained in the Plan and in this Grant Document and that you consent to all grant terms and conditions, including without limitation, the covenants set forth in paragraph 4 of this Grant Document (the “Covenants”).

#### 2.1 RESTRICTED UNITS

- (a) **General.** You have been awarded 1,049,997 Restricted Units. A Restricted Unit represents the right to receive a share of ML&Co. Common Stock (the “Common Stock”) upon the expiration of the applicable Vesting Period as described below. Your Restricted Units do not have voting rights. A holder of a Restricted Unit will be paid cash amounts equal to dividends paid on an equivalent number of shares of Common Stock on the same date that dividends are paid on the Common Stock until the Restricted Units are paid in accordance with their terms.
- (b) **Vesting.** Except as described in paragraph 2.1(b) and in paragraph 3 of this Grant Document, your rights to Restricted Units shall terminate and the Restricted Units will be cancelled if you terminate employment or otherwise violate any of the terms and conditions of your grant prior to the end of the applicable Vesting Period as described below. Restricted Units may not be sold, transferred, assigned, pledged or otherwise encumbered during the applicable Vesting Period. Upon each of February 4, 2009, January 1, 2010 and January 1, 2011, the Vesting Period applicable to 34%, 33% and 33%, respectively, of such Restricted Units will expire and such Restricted Units will vest and shares of Common Stock will be delivered to you, subject to a reduction of the number of shares to be delivered of an amount of shares necessary to satisfy Merrill Lynch’s applicable tax withholding requirements.
- (c) **Termination of Rights to Restricted Units Prior to the End of the Vesting Period** Unless the Committee determines otherwise, rights to your unvested Restricted Units will terminate upon: (1) termination of employment for Cause (as such term is defined below); (2) your voluntary resignation in the first three years of your employment if you



fail to observe the Covenants set forth in paragraph 4 or fail to annually certify to the Corporation that you are in compliance with such Covenants; (3) termination upon your voluntary resignation for Good Reason (as defined below) if you fail to observe all the Covenants in paragraph 4 (other than those set forth in paragraphs 4(a) and (b)) and all unvested Restricted Units will be cancelled and shares will not be delivered to you. Under all other circumstances, including those described in paragraph 3 below, the Restricted Units will continue to vest notwithstanding termination provided that the Participant complies with the conditions set forth above.

Cause shall mean: (i) your engagement in (A) willful misconduct resulting in material harm to Merrill Lynch or (B) gross negligence with the performance of your duties; or (ii) your conviction of, or plea of nolo contendere to, a felony or any other crime involving fraud, financial misconduct or misappropriation of Merrill Lynch assets, or that would disqualify you from employment in the securities industry (other than a temporary disqualification).

Good Reason shall mean: (i) a meaningful and detrimental alteration in the nature of your responsibilities or authority, but only after you have notified Merrill Lynch in writing that you believe such an alteration has occurred and, within 30 days of our receipt of such notice, we have not been able to resolve the matter to our mutual satisfaction; (ii) your reporting to an executive other than the CEO of Merrill Lynch & Co., Inc. during the three-year period commencing on the effective date of this grant; or (iii) a material reduction in your total annual compensation (salary and VICP) that is not experienced generally by similarly situated employees of Merrill Lynch.

(d) **Delivery — Merrill Lynch Account Designation.**

- (i) Once your Restricted Units have vested in accordance with the terms of this Grant Document, you will be entitled to have those shares delivered, as soon as practicable, to a Merrill Lynch account.
- (ii) As a participant in the Plan, you must designate a Merrill Lynch account into which shares of Common Stock will be deposited when they are released to you. This account cannot be a Trust Account, Individual Retirement Account or other tax-deferred account. You may use a joint account if you are the primary owner of the account. Account designations can be made on the Payroll Self Service Web Site at <http://hr.worldnet.ml.com/edf2>. (From the HR Intranet homepage, click on Payroll Self Service.) If you do not designate an account, Merrill Lynch will transfer shares to Wells Fargo, Merrill Lynch's transfer agent, to be held on your behalf.

## 2.2 STOCK OPTIONS

- (a) **General.** You have been awarded 2,445,861 Nonqualified Stock Options (the "Stock Options"). Each Stock Option entitles you to purchase one share of Common Stock at the exercise price described below when the stock option becomes exercisable, subject to your continued employment with Merrill Lynch (except as otherwise provided in paragraph 2.2 and/or paragraph 3).

(b) **Exercisability.** Stock Options become exercisable as follows:

- (1) On February 4, 2009, 34% of the Stock Options shall become exercisable;
- (2) On January 1, 2010, 33% of the Stock Options shall become exercisable; and
- (3) On January 1, 2011, 33% of the Stock Options shall become exercisable.

Once exercisable, Stock Options will remain exercisable until the expiration date of the Stock Options on August 4, 2018, provided you remain employed by Merrill Lynch (except as otherwise provided in this paragraph 2.2 and/or paragraph 3), and have complied with the terms and conditions of the Grant Document and the Covenants.

(c) **Exercise Price.** The exercise price of the stock options is the price at which you have the right to purchase a share of the Common Stock regardless of the market value at the time of exercise. The exercise price is \$26.395 as reflected on the Certificate of Grant. Your option exercise choices are described on the Human Resources section of the Merrill Lynch *WorldNet* at:

[https://myportal-ltm.worldnet.ml.com/?id=6651\\_54016\\_54336\\_54458\\_54479](https://myportal-ltm.worldnet.ml.com/?id=6651_54016_54336_54458_54479).

(d) **How to Exercise Stock Options.** You may exercise Stock Options through the Retirement Services Group. You must open a Limited Individual Investor Account (LIIA) to exercise. You may submit exercise requests virtually 24 hours a day, seven days a week through the Interactive Voice Response Service (IVR) at 1-877-637-6767. Alternatively, participant service representatives are available to help you from at least 8:00 a.m. to 7:00 p.m. Eastern Time, on any day the New York Stock Exchange is open. Outside of the United States, you can call 609-818-8885 collect to speak to a participant service representative from 8 a.m. to Midnight Eastern Time on any day the New York Stock Exchange is open. You may also exercise your stock options by visiting the Benefits On Line Web-site at <https://www.benefits.ml.com>.

If you are a restricted person, you will be required to pre-clear any sale of Merrill Lynch equity securities and you will be prohibited from exercising your Stock Options within a blackout period. This may affect your ability to exercise stock options just prior to the expiration date. If you have questions regarding your status as a restricted person and the applicable blackout period, please contact the Corporate Secretary's Office.

(e) **Transferability.** Stock Options may not be assigned, pledged or otherwise transferred in whole or in part except as noted below or, in the event of death, to a beneficiary designated on the Designation of Beneficiary Form. A beneficiary may include a charity or trust. All or a portion of the Stock Options awarded herein may be transferred at any time after the grant date to children and grandchildren and to trusts for their benefit. Please contact your tax or financial advisor for advice on transferring stock options.

(f) **Termination of Rights Stock Options Prior to the End of the Exercisability Period** Unless the Committee determines otherwise, rights to Stock Options that have not been exercised will terminate upon: (1) termination of employment for Cause (as defined in paragraph 2.1(c)); (2) your voluntary resignation in the first three years of your employment if you fail to observe the Covenants set forth in paragraph 4 or fail to annually certify to the Corporation that you are in compliance with such Covenants; (3) termination upon your voluntary resignation by the Participant for Good Reason (as

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defined in paragraph 2.1(c) if you fail to observe all the Covenants in paragraph 4 other than those set forth in paragraphs 4(a) and (b) and, in each case, all unexercised Stock Options will be cancelled (with respect to exercisable Stock Options 90 days after termination in the case of terminations covered under 2.2(f)(2) and (3)) and may no longer be exercised by you. Under all other circumstances, including those described in paragraph 3 below, your Stock Options will continue to be and become exercisable in accordance with their terms provided that the Participant complies with the conditions set forth above.

### 3. Treatment of Restricted Units and Stock Options under Certain Circumstances.

In the event your termination occurs in connection with the limited circumstances outlined below, your grant of Restricted Units will continue to vest and your unvested Stock Options will continue to become and be exercisable notwithstanding termination, provided that you comply with the conditions described in paragraphs 2.1(c) and 2.2(f) and the conditions described below.

- (a) **Death.** If your death occurs prior to the end of the applicable Vesting Period for your Restricted Units, any unvested Restricted Units will vest immediately and shares (net of any withholding requirements) will be delivered to your designated beneficiary or estate as soon as possible. Upon your death, any unexercisable Stock Options will become immediately exercisable and may be exercised by your designated beneficiary or estate until August 4, 2018.
- (b) **Disability or Career Retirement.** If your employment is terminated as a result of Disability or if you qualify for Career Retirement, your unvested Restricted Units will continue to vest and your Stock Options will continue to be and become exercisable notwithstanding your termination, in each case, on the schedule described in paragraphs 2.1(b) and 2.2(b), provided that (1) you do not compete with, or recruit employees from, Merrill Lynch and provide Merrill Lynch with a certification upon your termination and at least annually thereafter (the “Annual Certification”) that you are not engaged in or employed by a business which is in competition with Merrill Lynch and have not solicited or recruited employees from, Merrill Lynch and (2) you do not violate the Covenants. If you compete with the business of, or recruit employees from Merrill Lynch, or fail to return the Annual Certification or certification at exit to Merrill Lynch, or violate the Covenants during the applicable Vesting Period for your Restricted Units or the exercisability period for your Stock Options, your rights to your unvested Restricted Units and unvested and unexercised Stock Options will terminate and such Restricted Units and Stock Options will be cancelled.
- (d) **Definitions:**  
To be eligible for “**Career Retirement**” treatment, you must fulfill the following requirements:
- No determination shall have been made that there was **Cause** for your termination (as defined above); and

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- You must have completed at least 3 years of service with Merrill Lynch; or
  - At the request of Merrill Lynch, you become an employee (upon termination with Merrill Lynch) of, a spin-off of a Merrill Lynch company or business, or of a non-consolidated joint venture company in which Merrill Lynch has made an investment which, in each case, is expressly approved for Career Retirement treatment by the Head of Human Resources, or his or her functional successor.
  - You will **not** be eligible for **Career Retirement** or **Disability** (and your unvested Restricted Units and unvested and unexercised Stock Options will be cancelled) if: (1) following your termination, you engage in any business that is in competition with the business of Merrill Lynch, (2) prior to or following your termination you solicit or recruit any Merrill Lynch employees, (3) you fail to certify, at termination that you are in compliance with conditions 1 and 2 or fail to sign and return the Annual Certification, or (4) prior to or following your termination, you violate any of the Covenants.

“**Disability**” shall mean a physical or mental condition that, in the opinion of the Head of Human Resources of Merrill Lynch (or his or her functional successor), renders you incapable of engaging in any employment or occupation for which you are suited by reason of education or training.

#### 4. Covenants.

- (a) **Notice Period.** You agree that, for the remainder of your employment, you shall provide ML&Co. with at least six months advance written notice (the “**Notice Period**”) prior to the termination of your employment. During this Notice Period, you shall remain employed by Merrill Lynch (and receive base salary and certain benefits, but will not receive any payments or distributions or accrue any rights to a bonus or any payments or distributions under the Variable Incentive Compensation Program, pro-rata or otherwise) and shall not commence employment with any other employer. You further agree that during the Notice Period, you shall not directly or indirectly induce or solicit any client of Merrill Lynch to terminate or modify its relationship with Merrill Lynch.
- (b) **Employment by a Competitor.** You agree that, during the period beginning on the date of the termination of your employment and ending on the date of vesting of 100% of your Restricted Units, or, if later, the date on which your Stock Options expire, you will not, without prior written consent from ML&Co., engage in any employment, accept or maintain any directorship or other position, own an interest in, or, as principal, agent, employee, consultant or otherwise, provide any services to anyone, whether or not for compensation, in any business that is engaged in competition with the business of ML&Co. or its affiliates (a “**Competitive Business**”). Notwithstanding the foregoing, you may have an interest constituting less than 1 percent of any class of publicly traded securities in any public company that is a competitive business.
- (c) **Non-Solicitation.** You agree that you will not directly or indirectly solicit for employment any person who is or was an employee of ML&Co. or any of its affiliates at any time during the six-month period immediately preceding the date of such solicitation.

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- (d) **No Hire.** You agree that during a period of six months following your termination, you will not hire or otherwise engage, directly or indirectly (including, without limitation, through an entity with which the you are associated), as an employee or independent contractor, any person who is or was an employee of ML&Co. or any of its affiliates and who, as of the date of your termination of employment, had the title First Vice President or Managing Director or higher and reported directly to you or to the Chief Executive Officer or President of ML&Co. (“Executive, CEO or President Direct Reports”) or any person with the title First Vice President or Managing Director or higher who, at the time of your termination, reported directly to the Executive, CEO or President Direct Reports, *provided, however*, that the hiring of any person whose employment was involuntarily terminated by ML&Co. or any of its affiliates shall not be a violation of this covenant.
- (e) **Non-Disparagement.** You agree that you will not disparage, portray in a negative light, or make any statement which would be harmful to, or lead to unfavorable publicity for, ML&Co. or any of its affiliates, or any of its or their current or former directors, officers or employees, including without limitation, in any and all interviews, oral statements, written materials, electronically displayed materials and materials or information displayed on internet- or intranet-related sites; provided however, nothing contained herein shall prohibit or restrict (i) providing information to, or otherwise assisting in, an investigation by Congress, the Securities and Exchange Commission (“SEC”), or any other federal regulatory or law enforcement agency or self-regulatory organization (“SRO”); (ii) testifying, participating, or otherwise assisting in a proceeding relating to an alleged violation of any federal law relating to fraud or any rule or regulation of the SEC or any SRO or in an internal investigation by Merrill Lynch or (iii) testifying, participating, or otherwise assisting in any administrative investigation or proceeding relating to an alleged violation of any discrimination or wage law.
- (f) **Confidential Information.** You agree that following any termination of employment, you will not without prior written consent or as otherwise required by law, disclose or publish (directly or indirectly) any Confidential Information (as defined below) to any person or copy, transmit or remove or attempt to use, copy, transmit or remove any Confidential Information for any purpose. “Confidential Information” means any information concerning ML&Co. or any of its affiliates’ business or affairs which is not generally known to the public and includes, but is not limited to, any file, document, book, account, list, process, patent, specification, drawing, design, computer program or file, computer disk, method of operation, recommendation, report, plan, survey, data, manual, strategy, financial data, client information or data, or contract which comes to your knowledge in the course of your employment or which is generated by you in the course of performing your obligations whether alone or with others provided that, nothing contained herein shall prohibit or restrict a Participant from (i) providing information to, or otherwise assisting in, an investigation by Congress, the Securities and Exchange Commission (“SEC”), or any other federal regulatory or law enforcement agency or self-regulatory organization (“SRO”); (ii) testifying, participating, or otherwise assisting in a proceeding relating to an alleged violation of any federal law relating to fraud or any rule or regulation of the SEC or any SRO or in an internal investigation by Merrill Lynch or (iii) testifying, participating, or otherwise assisting in any administrative investigation or proceeding relating to an alleged violation of any discrimination or wage law.

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- (g) **Confidentiality.** You also agree that in the event your employment is terminated you will not disclose the circumstances of your termination to any other party, *except that*, (i) on a confidential basis to tax, financial or legal advisors, immediate family members, or any prospective employer or business partner, *provided that*, in each case, such third party agrees to keep such circumstances confidential and (ii) this provision shall not prevent a response to any inquiry about termination of employment or its underlying facts and circumstances by any self regulatory organization or regulatory or governmental agency.
- (h) **Cooperation.** You agree to (i) provide truthful and reasonable cooperation, including but not limited to your appearance at interviews and depositions, in all legal matters, including but not limited to regulatory and litigation proceedings relating to your employment or area of responsibility at Merrill Lynch or its affiliates, whether or not such matters have already been commenced and through the conclusion of such matters or proceedings, and (ii) to provide Merrill Lynch's counsel all documents in your possession or control relating to such regulatory or litigation matters.
- (i) **Injunctive Relief.** Without limiting any remedies available, you acknowledge and agree that a breach of the covenants contained in subparagraphs (a) – (d), (f) and (g) of this paragraph 4 will result in material and irreparable injury to Merrill Lynch and its affiliates for which there is no adequate remedy at law and that it will not be possible to measure damages for such injuries precisely. Therefore, you agree that, in the event of such a breach or threat thereof, Merrill Lynch shall be entitled to seek a temporary restraining order and a preliminary and permanent injunction, without bond or other security, restraining him or her from engaging in activities prohibited by subparagraphs (a) – (d), and (f)-(h) of this paragraph 4 or such other relief as may be required specifically to enforce any of the covenants in subparagraphs (a)-(d) and (f)-(h) of this paragraph 4, *provided however*, that Merrill Lynch shall be entitled to seek injunctive relief for violations of subparagraph (c) of this paragraph 4 only during the period beginning on the date of your termination of employment and ending on the first anniversary of that date.

#### 5. Effect of a Change in Control of ML&Co.

Notwithstanding Article VIII of the Plan, the treatment of the Restricted Units and Nonqualified Stock Options, in the event of a Change in Control of ML&Co. (as defined in the Plan) followed by your termination other than for Cause or your resignation for Good Reason (in each case as defined in paragraph 2.1(c) hereof, shall be as follows:

- (a) **For Restricted Units**  
100% of all unvested Restricted Units shall immediately vest and become payable; and
- (b) **For Stock Options**  
100% of all unexercised Stock Options shall immediately vest and be or become exercisable and remain exercisable for the remainder of their original term;

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provided that, in the case of paragraphs 5(a) and (b), in the event that Merrill Lynch is not a surviving company in the Change in Control transaction, your right to receive securities will be converted, based on the terms of the Change in Control transaction, to securities of the acquiring entity.



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May 1, 2008

Thomas K. Montag  
135 Central Park West, 11NC  
New York, NY 10023

Dear Tom:

We are pleased to offer you the position of Head of Global Sales and Trading, reporting to John A. Thain, Chairman and CEO. In this capacity you will also be an Executive Vice President of Merrill Lynch. We anticipate and you agree that you will commence employment on August 4, 2008 (“the Start Date”).

The terms of our offer of employment are as follows:

1. COMPENSATION

a. Salary

Your starting salary will be at the annualized rate of \$600,000.00 and will commence on the Start Date.

b. Incentive Compensation

You will be eligible to participate in the Merrill Lynch Variable Incentive Compensation Program (VICP). In general, VICP awards are granted annually at the sole discretion of management based upon individual performance, company financial results, and other criteria. However, for Performance Year 2008, you will receive a guaranteed VICP award of \$39,400,000.00, provided you are in the continuous employment of Merrill Lynch through the scheduled payment date in early 2009 (“your Guaranteed VICP Award”). Your Guaranteed VICP Award may consist of cash or cash and equity, at the discretion of Merrill Lynch, but any portion of your Guaranteed VICP Award granted in equity will be at a percentage of your total compensation generally equivalent to the treatment given to similarly situated executives. Any equity portion of your Guaranteed VICP Award may consist of Merrill Lynch Restricted Units or other equity instruments subject to the vesting and other provisions of the applicable Merrill Lynch & Co., Inc. employee stock compensation plan (“the SCP”) and grant documents. Except as otherwise specifically provided in the applicable SCP and grant documents or in this letter, if your employment terminates for any reason or if you violate any of the terms and conditions of the grant prior to the vesting and/or distribution to you of your equity grant, your rights to the unvested and/or undistributed portion shall be terminated and such grants will be canceled. All



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equity grants are subject to the approval of the Management Development and Compensation Committee of the Merrill Lynch & Co., Inc. Board of Directors (“the MDCC”).

Your performance will be reviewed periodically. Any future salary and other compensation, including any future awards under the VICP, will be based on a consideration of a number of factors, including, but not limited to, company financial results and your individual performance, and shall be determined in Merrill Lynch’s sole discretion.

## **2. REPLACEMENT OF FORFEITED EQUITY**

To make you whole for the value of equity awards granted by your former employer that you will lose (including the time value of options you will exercise in advance of, or within thirty days of your Start Date, the time value of options you exercised in anticipation of your Acceptance Date, and the time value of options that are not exercisable as of the date of your written acceptance of this offer (“the Acceptance Date”)) in connection with your employment with Merrill Lynch (the “Forfeiture”) and subject to MDCC approval at its first regularly scheduled meeting following the Start Date, with respect to the equity grants described in this paragraph, Merrill Lynch will make cash payments and/or grants of equity to you, subject to our receiving reasonable written confirmation of a Forfeiture, in an aggregate amount to which we will agree (“the Replacement Value”). The Replacement Value will be divided in a manner to which we will agree into cash, Restricted Units, and stock options components (“the Cash Component,” “the Restricted Unit Component,” and “the Stock Option Component,” respectively).

- The Cash Component will be paid to you in cash within 30 days of the Start Date and will include the time value of options you will exercise in advance of, or within thirty days of your Start Date (including the time value of options you exercised in anticipation of your Acceptance Date).
- The Restricted Unit Component will be paid in the form of a grant of Merrill Lynch Restricted Units (the “Replacement Restricted Units”). Restricted Units will vest thirty-four percent six months from the start date, thirty-three percent on January 1, 2010 and thirty-three percent on January 1, 2011.
- The Stock Option Component will be paid in the form of a grant of stock options to purchase shares of Merrill Lynch common stock (“the Replacement Stock Options”). The Replacement Stock Options will have an exercise price equal to the average of the high and low prices of Merrill Lynch common stock on the New York Stock Exchange on the day the grant is approved by the MDCC or, if such date is not a trading day, on the previous trading day. Replacement Stock Options will become exercisable thirty-four percent six months from the start date, thirty-three percent on January 1, 2010 and thirty-three percent on January 1, 2011. Exercisable Replacement Stock Options shall remain exercisable until the tenth anniversary of the Start Date.

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Should the MDCC fail to approve any or all of the Replacement Restricted Units and/or Replacement Stock Options, the value of the unapproved portion will be paid to you in cash no later than March 15, 2009.

**3 . EFFECT OF THE TERMINATION OF YOUR EMPLOYMENT ON YOUR GUARANTEED VICP AWARD, ANY FUTURE EQUITY AND THE REPLACEMENT VALUE**

**a. Qualifying Employment Termination**

For purposes of this letter, either the termination of your employment by Merrill Lynch without Cause or your resignation with Good Reason, each as defined below, shall be deemed a Qualifying Employment Termination.

**b. Your Guaranteed VICP Award and Any Future Equity Awards**

- If a Qualifying Employment Termination occurs before you are paid the cash portion of your Guaranteed VICP Award and before you are granted any equity portion of your Guaranteed VICP Award by the MDCC, the entire Guaranteed VICP Award will be paid to you in cash on or about the scheduled payment date in early 2009, but not later than March 15, 2009.
- If a Qualifying Employment Termination occurs after you are paid the cash portion of your Guaranteed VICP Award but before you are granted any equity portion of your Guaranteed VICP Award by the MDCC, that portion of your Guaranteed VICP Award that Merrill Lynch intended to award you in the form of an equity grant will be paid in cash on or about the scheduled payment date in early 2009, but not later than March 15, 2009.
- If a Qualifying Employment Termination occurs after you are paid the cash portion of your Guaranteed VICP Award and after you are granted any equity portion of your Guaranteed VICP Award and any subsequent equity awards, such grants will continue to vest, be delivered to you, and become and remain exercisable, as the case may be, in accordance with the schedule contained in the grant, but only on the condition that you comply with the post-employment covenants and other provisions of the SCP, the grant documents, and the covenant agreement attached hereto, except for those provisions requiring notice of your resignation and restricting your employment by a competitor, which shall be waived.
- (1) If your employment is terminated by Merrill Lynch for Cause or (2) if you resign from Merrill Lynch for other than Good Reason before the Third Anniversary of the Start Date without meeting the eligibility criteria for Career Retirement as described in the SCP and grant documents, then any undistributed and or unexercised equity awards from the equity portion of your Guaranteed VICP Award and any subsequent equity awards will be canceled and you shall have no further rights with respect thereto.

c. **Replacement of Forfeited Equity**

- If a Qualifying Employment Termination occurs before you are paid the cash portion of the Replacement Value and before you are granted the equity portion of the Replacement Value by the MDCC, the entire Replacement Value will be paid to you in cash as soon as practical but not to exceed 6 months and in any event, on or before December 31 of the year following the year in which your Qualifying Employment Termination occurs.
- If a Qualifying Employment Termination occurs after you are paid the cash portion of the Replacement Value but before you are granted the equity portion of the Replacement Value by the MDCC, that portion of the Replacement Value due in the form of equity grants will be paid in cash as soon as practical but not to exceed 6 months and in any event, on or before December 31 of the year following the year in which your Qualifying Employment Termination occurs.
- If a Qualifying Employment Termination occurs after you are paid the cash portion of the Replacement Value and after you are granted the equity portion of the Replacement Value by the MDCC, such grants will continue to vest, to be delivered to you, and become and remain exercisable, as the case may be, in accordance with the schedule contained in the grant, but only on the condition that you comply with the post employment covenants and other provisions of the SCP, the grant documents, and the covenant agreement attached hereto, except for those provisions requiring notice of your resignation and restricting your employment by a competitor, which shall be waived.
- If your employment is terminated by you or by Merrill Lynch for any reason other than by Merrill Lynch for Cause and such employment termination is not a Qualifying Employment Termination, after you are paid the cash portion of the Replacement Value and after you are granted the equity portion of the Replacement Value by the MDCC, such grants will continue to vest, be delivered to you, and become and remain exercisable, as the case may be, in accordance with the schedule contained in the grant, but only on the condition that you comply with the post employment covenants and other provisions of the SCP, the grant documents, and the covenant agreement attached hereto.
- If your employment is terminated by you or by Merrill Lynch for any reason other than by Merrill Lynch for Cause and such employment termination is not a Qualifying Employment Termination, and such termination occurs before you have been both (a) paid the cash portion of the Replacement Value and (b) granted the equity portion of the Replacement Value by the MDCC, then the cash equivalents of such grants, will be paid to you according the vesting and delivery schedule and/or the exercisability schedule, as the case may be, that would have been contained in the grant had it been made, on the condition that you comply with the post employment covenants and other provisions of the SCP, the grant documents, and the covenant agreement attached hereto.

- If your employment terminates by Merrill Lynch for Cause after you are paid the cash portion of the Replacement Value and after you are granted the equity portion of the Replacement Value by the MDCC, any undistributed and/or unexercised portion of the equity portion of the Replacement Value will be canceled and you shall have no further rights with respect thereto.

#### **4. DEFINITION OF CAUSE**

For all purposes of this letter (except for the terms of the payments and equity grants in satisfaction of the Replacement Value, including without limitation the Replacement Restricted Units and Replacement Stock Options), Cause shall mean: (i) any substantial violation of Merrill Lynch's rules, regulations, policies, practices and/or procedures; (ii) any substantial violation of laws, rules or regulations of any governmental entity or regulatory or self-regulatory organization, applicable to Merrill Lynch; (iii) criminal, illegal, dishonest, immoral, or unethical conduct reasonably related to your employment; or (iv) a substantial breach of this letter or any of the accompanying attachments; provided, however, that the definition of "Cause" that applies to your VICP equity awards and any subsequent awards shall not include any action or event not included in any definition of "Cause" generally applicable to similarly situated executives of Merrill Lynch as in effect from time to time. With respect to (i) and (iv) above, Cause shall exist only after you are given notice and an opportunity to correct your conduct, unless such conduct or its consequences cannot be reasonably corrected.

For purposes of the terms of the payments and equity grants in satisfaction of the Replacement Value, including without limitation the Replacement Restricted Units and Replacement Stock Options, Cause shall mean: (i) your engagement in (A) willful misconduct resulting in material harm to Merrill Lynch or (B) gross negligence in connection with the performance of your duties; or (ii) your conviction of, or plea of nolo contendere to, a felony or any other crime involving fraud, financial misconduct or misappropriation of Company assets, or that would disqualify you from employment in the securities industry (other than a temporary disqualification).

#### **5. DEFINITION OF GOOD REASON**

For the purpose of this letter agreement, Good Reason shall mean: (i) a meaningful and detrimental alteration in the nature your responsibilities or authority, but only after you have notified Merrill Lynch in writing that you believe such an alteration has occurred and, within 30 days of our receipt of such notice, we have not been able to resolve the matter to our mutual satisfaction; (ii) your reporting to an executive other than the CEO of Merrill Lynch & Co., Inc. during the three year period commencing on the Start Date; or (iii) a material reduction in your total annual compensation (salary and VICP) that is not experienced generally by similarly situated employees of Merrill Lynch.

#### **6 . TERMS RELATING TO YOUR VOLUNTARY RESIGNATION AFTER THE THIRD ANNIVERSARY OF YOUR START DATE**

Subject to MDCC approval, the grants under the SCP of the equity portion of your Guaranteed VICP Award and any subsequent equity awards granted to you prior to your satisfying the

service and age requirements generally applicable to Career Retirement treatment shall provide that you will be eligible for Career Retirement treatment with respect to such grants upon completing three years of service, without any other requirement relating to your age or service, but subject to all other requirements and conditions normally associated with Career Retirement treatment imposed by the SCP, the grant documents, and the Covenant Agreement attached hereto.

**7. TERMS RELATING TO CHANGE IN CONTROL**

If following a Change in Control a Qualifying Employment Termination occurs, any equity awards granted to you (including, without limitation, any awards granted in satisfaction of Replacement Value or your Guaranteed VICP Award or any subsequent awards) will immediately vest in full, be delivered to you and become and remain exercisable for the full original term, as the case may be, and shall not be subject to any forfeiture provisions or covenants; provided that, in the event that Merrill Lynch is not a surviving company in the Change in Control transaction, your right to receive securities will be converted, based on the terms of the change in control transaction, to securities of the acquiring entity.

The preceding sentence shall apply to your equity awards, notwithstanding any provisions in the applicable SCP or award agreement governing the treatment of equity awards in the event of a termination of employment without Cause or for Good Reason following a Change in Control. For the avoidance of doubt, Section 8.1 of the Merrill Lynch & Co., Inc. Long-Term Incentive Compensation Plan, and any similar provision contained in the applicable SCP, shall not apply to equity awards granted to you.

**8. MITIGATION**

In no event shall you be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to you under any of the provisions of this letter agreement and, such amounts shall not be reduced whether or not you obtain other employment, except where such employment violates a condition of payment.

**9. COVENANT AGREEMENT**

On or prior to the Start Date, you agree to enter into Merrill Lynch's standard covenant agreement for executives, a copy of which is attached hereto.

**10. INDEMNIFICATION**

During and after your employment, Merrill Lynch shall indemnify and defend you with respect to claims relating to your employment to the fullest extent permitted under applicable law and Merrill Lynch's Certificate of Incorporation.

**11. IRC SECTION 409A COMPLIANCE**

Notwithstanding anything herein to the contrary, if any payments of money or other benefits due to you hereunder would cause the application of an accelerated or additional tax under Section 409A of the Internal Revenue Code of 1986, as amended, such payment or other benefits shall be

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deferred if deferral will make such payment or other benefits compliant under Section 409A of the Code, or otherwise such payment or other benefits shall be restructured in a manner that does not cause such an accelerated or additional tax.

**12. FEES**

Merrill Lynch will reimburse you for your actual attorney and consultant fees incurred in the finalization of this letter agreement, up to \$25,000.00.

**13. WORK AUTHORIZATION**

You must also be able to satisfy the requirements of the Immigration Reform and Control Act of 1986, which requires documents to prove your identity and demonstrate that you are authorized to work in the U.S., and to complete an Employment Eligibility Verification form (Form I-9).

A further condition of this offer and your employment with Merrill Lynch is that you have not been convicted of a felony or certain misdemeanors which would disqualify you from employment with Merrill Lynch under federal securities law and under the rules of the Financial Industry Regulatory Authority. (These preconditions are referenced in the Merrill Lynch Statement of Employment Conditions and the Merrill Lynch Policy on Statutory Disqualification.)

**14. PRE-EMPLOYMENT PREPARATION**

Prior to your start date with Merrill Lynch, you are required to complete pre-employment screenings, which includes substance abuse screening and Form I-9 verification. The Employee Service Center will assist you in scheduling these appointments. In addition, you must review Merrill Lynch policies and guidelines and submit a series of forms that provide required personal information. You will be receiving an email from our Employment Service Center instructing you on how to proceed with this process. If you have any questions in the interim, or you do not receive this email, please contact me.

You should also carefully review the attached Statement of Employment Conditions as this offer and your employment with Merrill Lynch are subject to them. In the event of a conflict between the Statement of Employment Conditions and this letter agreement, this letter agreement shall control.

Until this letter is filed with the SEC, you agree to keep this letter and its terms strictly confidential and not to disclose them to any person or entity except your attorney, financial advisor, and immediate family members, as long as such individuals agree that they are subject to this confidentiality provision. Nothing in this letter shall prohibit or restrict you from providing information pursuant to legal process.

This offer is contingent upon the approval of the MDCC. Once that approval is obtained, Merrill Lynch represents and warrants that it is fully authorized and empowered to enter into this Agreement and to perform its obligations thereunder. Any notice to you that is required under, or which concerns this Agreement shall be sent to you at your most recent address on file, and to your counsel:

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Steven Eckhaus, Esq.  
McCarter & English, LLP  
245 Park Avenue  
New York, NY 10167  
seckhaus@mccarter.com

This Agreement may be executed in counterparts, including by fax or PDF, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

In the event of a conflict between this letter and any other document, this letter shall control.

Tom, it goes without saying that we believe you can make a significant contribution to Merrill Lynch, and we look forward to your joining us.

Sincerely,

/s/ Peter R. Stingj

Peter R. Stingj  
SVP, Head of Global Human Resources

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**Acceptance of offer**

My signature below confirms acceptance of the offer of employment and my understanding of the terms and conditions associated with it. This signature also confirms that there are no oral promises associated with this offer that are not reflected in this letter and I am not relying on any such promises or understandings in accepting this offer. In signing this letter, I further acknowledge that I have received, read, and agree to all pre-employment conditions and policies referred to in this letter, specifically the enclosed Statement of Employment Conditions and Policy on Statutory Disqualification.

Signed: /s/ Thomas K. Montag

Date: 5/1/08

Enclosed:

- Statement of Employment Conditions
- Policy on Statutory Disqualification
- Covenant Agreement



## Statement of Employment Conditions

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All offers and/or contracts of employment by Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated or any of their subsidiaries, or affiliates, (“Merrill Lynch”) are subject to the following conditions:

1. Unless otherwise expressly and specifically agreed to in writing and signed by an authorized officer of Merrill Lynch, all employment is terminable at will by either party. Written descriptions of compensation to be paid or benefits offered, including those in an employment offer letter, do not alter the at will employment status of any employee.
2. Where applicable, all job offerees must provide documentary evidence of their right to work in the country where their position is located prior to beginning employment. In the U.S., the job offeree must provide documents necessary to meet the terms of the Immigration Reform and Control Act of 1986, which requires that the job offeree provide documents that prove his/her identity and demonstrate that he/she is authorized to work in the U.S.
3. Employment at Merrill Lynch is subject to pre-employment screening requirements, the results of which must be acceptable to Merrill Lynch. These requirements consist of reference and background checks, including fingerprinting and criminal background searches, and, depending on job offeree’s work location, may include substance abuse screening.
4. All job offerees and employees are subject to federal securities laws and the rules of the Financial Industry Regulatory Authority (“FINRA”) that prohibit persons who are subject to “statutory disqualification” from being employed by Merrill Lynch. The job offeree must not have been convicted of a felony or certain misdemeanors that would disqualify him/her from employment with Merrill Lynch under federal securities law and under FINRA rules.
5. Unless otherwise expressly and specifically agreed to in writing, and signed by an authorized officer of Merrill Lynch, all compensation levels are within Merrill Lynch’s sole discretion and may be modified at any time.
6. Unless otherwise expressly and specifically agreed to in writing, no compensation, either cash payments or equity awards, will be paid or awarded unless the employee is in the continuous employment of Merrill Lynch through the date of payment, except for amounts of base salary earned prior to termination and any unused, accrued vacation as required by state law. Continued employment with Merrill Lynch until the payment or award date is a pre-condition to any compensation payment or equity award, including any bonus, and no pro-rata payment or award will be due if employment terminates prior to the payment or award date.
7. All officer titles in Merrill Lynch or any of its subsidiaries (e.g., Vice President) are subject to formal approval by the appropriate governing body.

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8. All non-public information concerning Merrill Lynch is its property, will be held in confidence by the employee, and will be used only for Merrill Lynch's, or the clients' benefit.
  9. Any inventions, together with non-public information of its clients, and copyrightable material developed by the employee in the scope of their employment will be promptly disclosed to Merrill Lynch and will be "works for hire" owned by Merrill Lynch, and the employee will, at Merrill Lynch's expense, do whatever is necessary to transfer to Merrill Lynch, or document its ownership of, any such property.
  10. Events giving rise to reports required to be filed with regulatory organizations such as the Securities and Exchange Commission, FINRA, and any other regulatory organization in the U.S. or abroad must be reported promptly to your manager and where appropriate to the Firm's Compliance Department or Corporate Security. These events include but are not limited to employee arrests, indictments and convictions, misappropriations by employees, the receipt of written customer complaints, and litigation matters involving customers of Merrill Lynch.
  11. Employees may not open or maintain securities accounts at other broker dealers. This policy extends to accounts in which the employee has a financial interest or has the power, directly or indirectly, to make investment decisions, including accounts of spouses and dependent children. Exceptions are rarely granted and require the written pre-approval of the employee's manager and the Firm's Compliance Department.
  12. Employees are expected to adhere to ethical standards of business conduct including those described in Merrill Lynch's Guidelines for Business Conduct, its Guidelines for Electronic Communications, and its A Matter of Respect. Failure to do so can result in disciplinary action, including termination of employment.

These conditions of employment may be modified only in writing by the Executive Vice President for the business unit.

## Policy on Statutory Disqualification

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The federal securities acts and the Financial Industry Regulatory Authority rules prohibit persons who are subject to “statutory disqualification” from being employed by or associated with any member of a self-regulatory organization including brokerage firms. A person is subject to statutory disqualification if, within the previous ten year period, he or she has been convicted of, or pled guilty or no contest to, **any felony, regardless of the crime**. Thus, persons convicted of a felony involving the possession or use of drugs, domestic violence, assault, etc. are subject to this prohibition, regardless of whether the offense related in any way to a financial institution, securities or financial transaction. **In addition, the prohibition extends to any misdemeanor involving:**

- Securities, commodities, banking, insurance, real estate, and purchase or sale of a security
- Bribery
- Burglary
- Embezzlement; theft of money
- Counterfeiting
- Conspiracy
- Forgery
- Robbery
- Extortion
- Petit larceny
- Making a false statement to a Government Official, Law Enforcement Officer, or under oath
- Theft of a credit card, including use or possession of a stolen credit card

THIS AGREEMENT, dated \_\_\_\_\_, 2008 (the “*Effective Date*”) (the “*Covenant Agreement*”), by and between Merrill Lynch & Co., Inc., a Delaware corporation (the “*Company*” or “*Merrill Lynch*”), and Thomas K. Montag (the “*Executive*”).

WHEREAS, the Company has entered into an agreement with the Executive, dated March \_\_\_\_, 2008 (the “*Agreement*”), detailing the terms and conditions of his employment with the Company, pursuant to which the Company has agreed to pay certain amounts and grant certain equity awards, and the Executive has agreed to enter into this Covenant Agreement with the Company;

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth in this Covenant Agreement, the parties agree as follows:

1. **Covenants.** The Executive agrees to the following covenants and agrees that the remedies for failure to comply with these covenants shall be as set forth herein under the heading “**Remedies**”.
  - A. **Notice Period.** The Executive agrees that for the remainder of his or her employment, the Executive shall provide the Company and its affiliates (the “**Group Companies**”) with at least six months advance written notice (the “**Notice Period**”) prior to the termination of the Executive’s employment. The Executive further agrees that during the Notice Period, he or she shall remain employed by the Company (and receive base salary and certain benefits, but will not receive any payments or distributions or accrue any rights to a bonus or any payments or distributions under the Variable Incentive Compensation Program, pro-rata or otherwise) and shall not commence employment with any other employer. The Executive further agrees that during the Notice Period, he or she shall not directly or indirectly induce or solicit any client of the Company to terminate or modify its relationship with Merrill Lynch.
  - B. **Employment by a Competitor.** The Executive acknowledges that the Group Companies are engaged in a global business and that the Executive has been involved in providing services to the Group Companies throughout the world. The Executive agrees that, during the period beginning on the date of the termination of his or her employment and ending on the date of vesting of his or her Restricted Shares or Restricted Units and the expiration date of his or her Stock Options or Stock Appreciation Rights (as those terms are defined in the Company’s Long-Term Incentive Compensation Plans) granted by the Company, he or she will not, without the Company’s prior written consent, engage in any employment, accept or maintain any directorship or other position, own an interest in, or, as principal, agent, employee, consultant or otherwise, provide any services to anyone, whether or not for compensation, in any business that is engaged in competition with the business of the Group Companies or its affiliates (a “**Competitive Business**”). Notwithstanding the foregoing, the Executive may have an interest consisting of publicly traded securities constituting less than 1 percent of any class of publicly traded securities in any public company that is a competing business.
  - C. **Non-Solicitation.** The Executive agrees that the retention of the goodwill and franchise value of the Group Companies would be seriously eroded if employees were to leave the

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Group Companies. Accordingly the Executive agrees that he or she will not directly or indirectly solicit for employment any person who is or was an employee of the Group Companies at any time during the six-month period immediately preceding the date of such solicitation.

- D. **No Hire.** The Executive agrees that during a period of six months following his or her termination, he or she will not hire or otherwise engage, directly or indirectly (including, without limitation, through an entity with which the Executive is associated), as an employee or independent contractor of the Executive or of any entity with which the Executive is associated, any person who is or was an employee of the Group Companies and who, as of the date of the Executive's termination of employment, had the title First Vice President or Managing Director or higher and reported directly to the Executive, the Chief Executive Officer or the President of the Company ("Executive, CEO or President Direct Reports") or any person with the title First Vice President or Managing Director or higher who, at the time of the Executive's departure, reported directly to the Executive, CEO or President Direct Reports, *provided, however*, that the hiring of any person whose employment was involuntarily terminated by the Group Companies shall not be a violation of this covenant.
- E. **Non-Disparagement.** The Executive will not disparage, portray in a negative light, or make any statement which would be harmful to, or lead to unfavorable publicity for, any of the Group Companies, or any of its or their current or former directors, officers or employees, including without limitation, in any and all interviews, oral statements, written materials, electronically displayed materials and materials or information displayed on internet- or intranet-related sites; provided however, that this Covenant Agreement will not apply to the extent the Executive is making truthful statements when required by law or by order of a court or other legal body having jurisdiction or when responding to any inquiry from any governmental agency or regulatory or self-regulatory organization.
- F. **Confidentiality.** The Executive acknowledges that he or she has acquired experience, confidential information, trade secrets, know-how and particular skills in the affairs, practices, client requirements and trade connections of the Group Companies. Because of the commercial importance to the Group Companies of this knowledge, information and the other matters referred to above, the Group Companies have an important interest in ensuring that after the termination of the Executive's employment this knowledge is not used for the personal benefit of the Executive or to the detriment of the Group Companies. Therefore, the Executive agrees that following any termination of employment: he or she will not without prior written consent or as otherwise required by law, disclose or publish (directly or indirectly) any Confidential Information to any person or copy, transmit or remove or attempt to use, copy, transmit or remove any Confidential Information for any purpose. "Confidential Information" means any information concerning any of the Group Companies' business or affairs which is not generally known to the public and includes, but is not limited to, any file, document, book, account, list, process, patent, specification, drawing, design, computer program or file, computer disk, method of operation, recommendation, report, plan, survey, data, manual, strategy, financial data, client information or data, or contract which comes to

the Executive's knowledge in the course of his or her employment or which is generated by him or her in the course of performing his or her obligations whether alone or with others.

The Executive agrees not to disclose the terms of this Covenant Agreement or the circumstances of his or her termination to any other party, except that the Executive may make such disclosure: on a confidential basis to his or her tax, financial and legal advisors, his or her immediate family members, any prospective employer or business partner, *provided that*, in each case, such third party agrees to keep the circumstances of the Executive's termination and the terms of this Covenant Agreement confidential.

- G. **Cooperation.** Executive agrees to (i) provide truthful and reasonable cooperation, including but not limited to his or her appearance at interviews and depositions, in all legal matters, including but not limited to regulatory and litigation proceedings relating to his or her employment or area of responsibility at the Group Companies, whether or not such matters have already been commenced and through the conclusion of such matters or proceedings, and (ii) to provide the Group Companies' counsel all documents in Executive's possession or control relating to such regulatory or litigation matters. The Company will reimburse Employee for all reasonable travel expenses in connection with such cooperation.

The Executive agrees that the covenants contained in paragraphs A-G of this Section 1 are reasonable and necessary to protect the legitimate business interests and goodwill of the Group Companies and that agreeing to comply with such restrictions was an inducement for the Company to agree to enter into the Agreement with the Executive. To the extent that any of the covenants contained in paragraphs A-G of this Section 1 or any other provision of this agreement shall be deemed illegal or unenforceable by a court or other tribunal of competent jurisdiction with respect to (i) any geographic area, (ii) any part of the time period, (iii) any activity or capacity covered by such covenant, or (iv) any other term or provision of such covenant, the covenant shall be construed to the maximum breadth determined to be legal and enforceable and the illegality or unenforceability of any one covenant shall not effect the legality and enforceability of the other covenants.

2. **Equity Grants:** The Executive agrees that Restricted Units, Restricted Shares, Stock Options and Stock Appreciation Rights granted to him will be subject to forfeiture in the event that the Executive breaches any of the covenants contained in this Covenant Agreement.
3. **Remedies.**
- A. **Forfeiture of Equity Awards.** The Executive agrees that in the event of a breach of any of the covenants contained herein, that his or her outstanding equity awards shall be forfeited.
- B. **Injunctive Relief.** Without limiting any remedies available, the Executive acknowledges and agrees that a breach of the covenants contained in subparagraphs A, C, D, E, F and G of paragraph 1 hereof will result in material and irreparable injury to the Group

Companies for which there is no adequate remedy at law and that it will not be possible to measure damages for such injuries precisely. Therefore the Executive agrees that, in the event of such a breach or threat thereof, the Group Companies shall be entitled to seek and obtain a temporary restraining order and a preliminary and permanent injunction, without bond or other security, restraining him or her from engaging in activities prohibited by subparagraphs A, C, D, E, F and G of paragraph 1 or such other relief as may be required specifically to enforce any of the covenants in subparagraphs A, C, D, E, F and G of paragraph 1, *provided however*, that the Group Companies shall be entitled to seek injunctive relief for violations of subparagraph C of paragraph 1 only during the period beginning on the date of the Executive's termination from the Group Companies and ending on the first anniversary of that date.

- C. **Damages.** In addition to the remedies called for by subparagraphs A and B of this paragraph 3, the Group Companies retains the right to seek damages and other relief for any breach by the Executive of any covenant contained in this Covenant Agreement, *provided however*, that the Group Companies shall be entitled to seek damages for violations of subparagraph C of paragraph 1 only during the period beginning on the date of the Executive's termination from the Group Companies and ending on the first anniversary of that date.

#### 4. Legal Matters

- A. **Governing Law.** This Covenant Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflicts of laws principles thereof.
- B. **Litigation.** The Executive and the Group Companies agree (a) to arbitrate any and all disputes arising out of or related to this Covenant Agreement before either JAMS (under their Comprehensive Arbitration Rules and Procedures), FINRA and (b) that judgment on any arbitration award may be entered in any court of competent jurisdiction. Any arbitration shall be held in the State and County of New York. The Executive and the Group Companies further agree that the Group Companies can seek temporary and preliminary injunctive relief in court and submit to the exclusive jurisdiction of any federal or state courts sitting in the State of New York, County of New York for that purpose and for any purposes for which the aid of the court is required with respect to any arbitration commenced with respect to this Covenant Agreement. The Executive and the Group Companies also agrees not to bring any action or proceeding arising out of or relating to this Covenant Agreement in any court or forum other than those specified in this paragraph 4.B. The Executive and the Group Companies waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the other party with respect thereto.

5. **Miscellaneous.**

- A. **Headings.** The section headings contained in this Covenant Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Covenant Agreement.
- B. **Employment at Will.** Nothing in this agreement alters the at will nature of the Executive's employment with the Company or any of the Group Companies. The Company and any of the Group Companies remain free to terminate the Executive's employment at any time for any reason without notice (and the notice period in paragraph 1.A of this Covenant Agreement does not apply to such terminations).
- C. **Voluntary Nature of Covenant Agreement.** The Executive represents that he or she is entering into this Covenant Agreement voluntarily and has had adequate opportunity to consider whether or not to sign it and to seek such counsel as he or she deems appropriate.
- D. **Amendment; Waiver.** This Covenant Agreement may not be changed orally; it may only be changed by a writing executed by both parties. Merrill Lynch's failure to enforce any provisions of this Covenant Agreement will not constitute waiver of its rights under this Covenant Agreement and shall not operate or be construed as a continuing waiver or as a consent to or waiver of any subsequent breach hereof.
- E. **No Reliance.** Executive is not relying on any representations, understandings, undertakings, statements, or agreements not expressly set forth in this Covenant Agreement and disclaims any reliance on any such representations, understandings, undertakings, statements, or agreements.
- F. **Construction.** In the event an ambiguity or question of intent or interpretation arises, this Covenant Agreement shall be construed as if drafted jointly by the Executive and the Company, and no presumption or burden of proof shall arise favoring or disfavoring either of them by virtue of the authorship of any of the provisions of this Covenant Agreement.
- G. **Counterparts.** This Covenant Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS



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IN WITNESS WHEREOF, the parties hereto have executed this Covenant Agreement as of the day and year indicated below.

MERRILL LYNCH & CO., INC.

By:           /s/ Peter R. Stingj          

Name: Peter R. Stingj  
Title: SVP, Head of Global Human  
Resources

Signed on:

          /s/ Thomas K. Montag

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**Summary of Agreement with respect to Post-Employment Medical Coverage**

Should your employment terminate without your attaining eligibility for coverage under Merrill Lynch's then-current retiree medical plan, and the termination of your employment is not for Cause, Merrill Lynch will provide access to a plan or policy that will provide coverage that is identical to or better than the coverage provided under the then-current retiree medical plan at a premium cost to you that is no more than the premium paid by eligible employees paying a premium unsubsidized by Merrill Lynch, on the condition that you do not engage in any employment, accept or maintain any directorship or other position, own an interest in, or, as principal, agent, employee, consultant or otherwise, provide any services to anyone, whether or not for compensation, in any business that is engaged in competition with the business of Merrill Lynch or its affiliates.

UNITED STATES DEPARTMENT OF THE TREASURY  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

December 9, 2009

Ladies and Gentlemen:

Reference is made to that certain Letter Agreement incorporating the Securities Purchase Agreement – Standard Terms (the “*Securities Purchase Agreement*”), dated as of the date set forth on Schedule A hereto, between the United States Department of the Treasury (the “*Investor*”) and the company set forth on Schedule A hereto (the “*Company*”). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Securities Purchase Agreement. Pursuant to the Securities Purchase Agreement, at the Closing, the Company issued to the Investor the number of shares of the series of its preferred stock set forth on Schedule A hereto (the “*Preferred Shares*”) and a warrant to purchase the number of shares of its common stock set forth on Schedule A hereto (the “*Warrant*”).

In connection with the consummation of the repurchase (the “*Repurchase*”) by the Company from the Investor, on the date hereof, of the number of Preferred Shares listed on Schedule A hereto (the “*Repurchased Preferred Shares*”), as permitted by the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009:

(a) The Company hereby acknowledges receipt from the Investor of the share certificate(s) set forth on Schedule A hereto representing the Preferred Shares; and

(b) The Investor hereby acknowledges receipt from the Company of a wire transfer to the account of the Investor set forth on Schedule A hereto in immediately available funds of the aggregate purchase price set forth on Schedule A hereto, representing payment in full for the Repurchased Preferred Shares at a price per share equal to the Liquidation Amount per share, together with any accrued and unpaid dividends to, but excluding, the date hereof.

The Investor and the Company hereby agree that, notwithstanding Section 4.4 of the Securities Purchase Agreement, immediately following consummation of the Repurchase, but subject to compliance with applicable securities laws, the Investor shall be permitted to Transfer all or a portion of the Warrant or Substitute Warrant (as defined below) with respect to, and/or exercise the Warrant or Substitute Warrant for, all or a portion of the number of shares of Common Stock issuable thereunder, at any time and without limitation, and Section 4.4 of the Securities Purchase Agreement shall be deemed to be amended in order to permit the foregoing. The Company shall take all steps as may be reasonably requested by the Investor to facilitate any such Transfer.

In addition, the Company agrees that within 15 calendar days of the date hereof the Company shall either (a) deliver to the Investor a notice of intent to repurchase the Warrant in accordance with Section 4.9(b) of the Securities Purchase Agreement (the “*Warrant Repurchase Notice*”), or (b) issue and deliver to the Investor a new warrant, in substantially the form of the Warrant, except with the deletion of Section 13(H) thereof, to purchase the number of shares of Common Stock into which the Warrant is then exercisable (the “*Substitute Warrant*”), which Substitute Warrant shall be deemed the “*Warrant*” for all purposes under the Securities Purchase Agreement.

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In the event that the Company delivers a Warrant Repurchase Notice and the Company and the Investor fail to agree on the Fair Market Value of the Warrant pursuant to the procedures (including the Appraisal Procedure), and in accordance with the time periods, set forth in Section 4.9(c) of the Securities Purchase Agreement or the Company revokes the delivery of such Warrant Repurchase Notice, then the Company shall deliver a Substitute Warrant to the Investor within 5 calendar days of the earlier of the failure to agree on the Fair Market Value and the revocation of the Warrant Repurchase Notice.

Effective as of the date of receipt of the Substitute Warrant, if applicable, the Investor hereby provides notice, pursuant to Section 4.5(p) of the Securities Purchase Agreement, of its intention to sell the Substitute Warrant.

This letter agreement will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

This letter agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Executed signature pages to this letter agreement may be delivered by facsimile and such facsimiles will be deemed sufficient as if actual signature pages had been delivered.

*[Remainder of this page intentionally left blank]*

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In witness whereof, the parties have duly executed this letter agreement as of the date first written above.

UNITED STATES DEPARTMENT OF THE TREASURY

By: /s/ Herbert M. Allison, Jr.

Name: Herbert M. Allison, Jr.

Title: Assistant Secretary for Financial Stability

BANK OF AMERICA CORPORATION

By: /s/ Teresa M. Brenner

Name: Teresa M. Brenner

Title: Associate General Counsel

General Information:

Date of Letter Agreement incorporating Securities Purchase Agreement:	January 9, 2009
Name of the Company:	Bank of America Corporation
Corporate or other organizational form of the Company:	Corporation
Jurisdiction of organization of the Company:	Delaware
Number and series of preferred stock issued to the Investor at the Closing:	400,000; Fixed Rate Cumulative Perpetual Preferred Stock, Series Q (the "Series Q Preferred Stock")
Number of Initial Warrant Shares:	121,792,790; the Warrant issued at the time of the issuance of the Series Q Preferred Stock includes the Initial Warrant Shares relating to the Series Q Preferred Stock and the Initial Warrant Shares relating to the 600,000 shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series N (the "Series N Preferred Stock") issued on October 28, 2008; the original warrant for 73,075,674 shares of the Company's common stock relating to the Series N Preferred Stock was cancelled on the date of issuance of the Warrant for 121,792,790 shares of the Company's common stock.

Terms of the Repurchase:

Number of Preferred Shares repurchased by the Company:	400,000
Share certificate number (representing the Preferred Shares previously issued to the Investor at the Closing):	ZQ00000002
Per share Liquidation Amount of Preferred Shares:	\$25,000.00
Accrued and unpaid dividends on Preferred Shares:	\$33,333,333.33
Aggregate Purchase price for Repurchased Preferred Shares:	\$10,033,333,333.33

**Investor wire information for payment of purchase price:**

<b>ABA Number:</b>	021 000 018
<b>Bank:</b>	The Bank of New York Mellon
<b>Account Name:</b>	BETA - PIE
<b>Account Number:</b>	GLA/111567
<b>Beneficiary:</b>	a/c #630315

UNITED STATES DEPARTMENT OF THE TREASURY  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

December 9, 2009

Ladies and Gentlemen:

Reference is made to that certain Securities Purchase Agreement (the "*Securities Purchase Agreement*"), dated as of the date set forth on Schedule A hereto, between the United States Department of the Treasury (the "*Investor*") and the company set forth on Schedule A hereto (the "*Company*"). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Securities Purchase Agreement. Pursuant to the Securities Purchase Agreement, at the Closing, the Company issued to the Investor the number of shares of the series of its preferred stock set forth on Schedule A hereto (the "*Preferred Shares*") and a warrant to purchase the number of shares of its common stock set forth on Schedule A hereto (the "*Warrant*").

In connection with the consummation of the repurchase (the "*Repurchase*") by the Company from the Investor, on the date hereof, of the number of Preferred Shares listed on Schedule A hereto (the "*Repurchased Preferred Shares*"), as permitted by the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009:

(a) The Company hereby acknowledges receipt from the Investor of the share certificate(s) set forth on Schedule A hereto representing the Preferred Shares; and

(b) The Investor hereby acknowledges receipt from the Company of a wire transfer to the account of the Investor set forth on Schedule A hereto in immediately available funds of the aggregate purchase price set forth on Schedule A hereto, representing payment in full for the Repurchased Preferred Shares at a price per share equal to the Liquidation Amount per share, together with any accrued and unpaid dividends to, but excluding, the date hereof.

The Investor and the Company hereby agree that, subject to compliance with applicable securities laws, the Investor shall be permitted to Transfer all or a portion of the Warrant with respect to, and/or exercise the Warrant for, all or a portion of the number of shares of Common Stock issuable thereunder, at any time and without limitation. The Company shall take all steps as may be reasonably requested by the Investor to facilitate any such Transfer.

Effective as of the date hereof, the Investor hereby provides notice, pursuant to Section 4.5(p) of the Securities Purchase Agreement, of its intention to sell the Warrant.

The Company and the Investor also agree as follows, which agreements shall constitute an amendment dated as of December 9, 2009 to the Securities Purchase Agreement:

[SIGNATURE PAGE TO REPURCHASE LETTER – 800,000 SHARES OF FIXED RATE CUMULATIVE  
PERPETUAL PREFERRED STOCK – SERIES R]



(1) The Company agrees, with respect to all employees covered by the bonus restrictions set forth in Q-10 of the TARP Standards for Compensation and Corporate Governance, 31 CFR 30 (the "Interim Final Rule"), to comply with the Interim Final Rule, and with the Special Master for TARP Executive Compensation's October 22, 2009, determination letter and memorandum with respect to the Company, as if the TARP period (as defined in the Interim Final Rule) extended to and included December 31, 2009, and further agrees that, in setting 2009 compensation for employees in the so-called 26-100 group referred to in Q-16(a)(3)(ii) of the Interim Final Rule, it will apply the principles set forth in Q-16(b)(1)(i) through (vi) of the Interim Final Rule; and

(2) The Company and the Investor hereby agree that (i) clauses (a), (b) and (c) of Section 4.10 of the Securities Purchase Agreement shall not apply to any period after 2009 and (ii) Section 4.10(f) of the Securities Purchase Agreement shall not require the filing of any report with respect to any period after 2009.

This letter agreement will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

This letter agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Executed signature pages to this letter agreement may be delivered by facsimile and such facsimiles will be deemed sufficient as if actual signature pages had been delivered.

*[Remainder of this page intentionally left blank]*

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In witness whereof, the parties have duly executed this letter agreement as of the date first written above.

UNITED STATES DEPARTMENT OF THE TREASURY

By: /s/ Herbert M. Allison, Jr.

Name: Herbert M. Allison, Jr.

Title: Assistant Secretary for Financial Stability

BANK OF AMERICA CORPORATION

By: /s/ Teresa M. Brenner

Name: Teresa M. Brenner

Title: Associate General Counsel

[SIGNATURE PAGE TO REPURCHASE LETTER – 800,000 SHARES OF FIXED RATE CUMULATIVE  
PERPETUAL PREFERRED STOCK – SERIES R]

General Information:

Date of Securities Purchase Agreement:	January 15, 2009
Name of the Company:	Bank of America Corporation
Corporate or other organizational form of the Company:	Corporation
Jurisdiction of organization of the Company:	Delaware
Number and series of preferred stock issued to the Investor at the Closing:	800,000; Fixed Rate Cumulative Perpetual Preferred Stock, Series R
Number of Initial Warrant Shares:	150,375,940

Terms of the Repurchase:

Number of Preferred Shares repurchased by the Company:	800,000
Share certificate number (representing the Preferred Shares previously issued to the Investor at the Closing):	ZQ00000001
Per share Liquidation Amount of Preferred Shares:	\$25,000.00
Accrued and unpaid dividends on Preferred Shares:	\$106,666,666.67
Aggregate Purchase price for Repurchased Preferred Shares:	\$20,106,666,666.67

Investor wire information for payment of purchase price:

<b>ABA Number:</b>	021 00 018
<b>Bank:</b>	The Bank of New York Mellon
<b>Account Name:</b>	BETA 2
<b>Account Number:</b>	GLA/111567
<b>Beneficiary:</b>	a/c #630235

**Bank of America Corporation and Subsidiaries**  
**Ratio of Earnings to Fixed Charges**  
**Ratio of Earnings to Fixed Charges and Preferred Dividends**

**Exhibit 12**

(Dollars in millions)	Year Ended December 31				
	2009	2008	2007	2006	2005
<b>Excluding Interest on Deposits</b>					
Income before income taxes	\$ 4,360	\$ 4,428	\$20,924	\$31,973	\$24,480
Equity in undistributed earnings of unconsolidated subsidiaries	(1,833)	(144)	(95)	(315)	(151)
Fixed charges:					
Interest expense	23,000	25,074	34,778	29,514	18,397
1/3 of net rent expense <sup>(1)</sup>	1,110	791	669	609	585
Total fixed charges	24,110	25,865	35,447	30,123	18,982
Preferred dividend requirements	5,921	1,461	254	33	27
Fixed charges and preferred dividends	30,031	27,326	35,701	30,156	19,009
<b>Earnings</b>	<b>26,637</b>	<b>\$30,149</b>	<b>\$56,276</b>	<b>\$61,781</b>	<b>\$43,311</b>
<b>Ratio of earnings to fixed charges</b>	<b>1.10</b>	<b>1.17</b>	<b>1.59</b>	<b>2.05</b>	<b>2.28</b>
<b>Ratio of earnings to fixed charges and preferred dividends<sup>(2)</sup></b>	<b>—</b>	<b>1.10</b>	<b>1.58</b>	<b>2.05</b>	<b>2.28</b>

(Dollars in millions)	Year Ended December 31				
	2009	2008	2007	2006	2005
<b>Including Interest on Deposits</b>					
Income before income taxes	\$ 4,360	\$ 4,428	\$20,924	\$31,973	\$24,480
Equity in undistributed earnings of unconsolidated subsidiaries	(1,833)	(144)	(95)	(315)	(151)
Fixed charges:					
Interest expense	30,807	40,324	52,871	43,994	27,889
1/3 of net rent expense <sup>(1)</sup>	1,110	791	669	609	585
Total fixed charges	31,917	41,115	53,540	44,603	28,474
Preferred dividend requirements	5,921	1,461	254	33	27
Fixed charges and preferred dividends	37,838	42,576	53,794	44,636	28,501
<b>Earnings</b>	<b>34,444</b>	<b>\$45,399</b>	<b>\$74,369</b>	<b>\$76,261</b>	<b>\$52,803</b>
<b>Ratio of earnings to fixed charges</b>	<b>1.08</b>	<b>1.10</b>	<b>1.39</b>	<b>1.71</b>	<b>1.85</b>
<b>Ratio of earnings to fixed charges and preferred dividends<sup>(2)</sup></b>	<b>—</b>	<b>1.07</b>	<b>1.38</b>	<b>1.71</b>	<b>1.85</b>

<sup>(1)</sup> Represents an appropriate interest factor.

<sup>(2)</sup> The earnings for 2009 were inadequate to cover fixed charges and preferred stock dividends. The earnings deficiency is a result of the accelerated accretion of \$4.0 billion recorded as a result of the repurchase of TARP Preferred Stock. The coverage deficiency for fixed charges and preferred dividends was \$3.4 billion.

**BANK OF AMERICA CORPORATION**  
**DIRECT AND INDIRECT SUBSIDIARIES AS OF 12/31/09**

<u>Name</u>	<u>Location</u>	<u>Jurisdiction</u>
100 Federal Street Limited Partnership	Boston, MA	Massachusetts
121 Washington Street Master Tenant, LLC	Providence, RI	Rhode Island
200 Allens Avenue, LLC	Providence, RI	Rhode Island
201 North Tryon, LLC	Charlotte, NC	North Carolina
214 North Tryon, LLC	Charlotte, NC	North Carolina
222 Broadway, LLC	New York, NY	New York
250 Capital LLC	New York, NY	Delaware
2007 Merrill Lynch Merchant Banking Fund, L.P.	New York, NY	Cayman Islands
2008 Merrill Lynch Merchant Banking Fund International, L.P.	New York, NY	Cayman Islands
2008 Merrill Lynch Merchant Banking Fund, L.P.	New York, NY	Cayman Islands
1110421 Ontario Limited	Toronto, Ontario, Canada	Canada
1300166 Ontario Limited	Toronto, Ontario, Canada	Canada
1343190 Alberta Inc.	Toronto, Ontario, Canada	Canada
A/M Properties, Inc.	Baltimore, MD	Virginia
AANAH Holding LLC	Chicago, IL	Delaware
AANAH Holding LLC II	Chicago, IL	Delaware
AANAH Holding LLC III	Chicago, IL	Delaware
Aarco 106 Limited	Chester, United Kingdom	United Kingdom
Abilene Park, Inc.	Charlotte, NC	Delaware
Abovo Investment Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Acceptance Alliance, LLC	Louisville, KY	Delaware
Access 1 Fundo De Investimento Em Cotas De Fundo De Investimento Em Direitos Creditorios Nao Padronizado	Sao Paulo, Brazil	Brazil
Achilles Trading LLC	Charlotte, NC	Delaware
Administradora Blue 2234 S. de R.L. de C.V.	Mexico City, Mexico	Mexico
Advest Group, Inc., The	New York, NY	Delaware
Aguila Corp S.A.C.	Lima, Peru	Peru
Alamo Funding II, Inc.	Charlotte, NC	Delaware
Alamo Funding LLC	Charlotte, NC	Delaware
Alexandra IV, LLC	New York, NY	Delaware
Alie Street Investments Limited		
Alie Street Investments 2 Limited	London, U.K.	United Kingdom
Alie Street Investments 3 Limited	London, U.K.	United Kingdom
Alie Street Investments 5 Limited	London, U.K.	United Kingdom
Alie Street Investments 6 Limited	London, U.K.	United Kingdom
Alie Street Investments 8 Limited	London, U.K.	United Kingdom
Alie Street Investments 9 Limited	London, U.K.	United Kingdom
Alie Street Investments 12 Limited	London, U.K.	United Kingdom
Alie Street Investments 16 Limited	London, U.K.	United Kingdom
Alie Street Investments 17 Limited	London, U.K.	United Kingdom
Alie Street Investments 18 Limited	London, U.K.	United Kingdom
Alie Street Investments 21 Limited	London, U.K.	United Kingdom
Alie Street Investments 22 Limited	London, U.K.	United Kingdom
Alie Street Investments 23 Limited	London, U.K.	United Kingdom
Alie Street Investments 24 Limited	London, U.K.	United Kingdom
Alie Street Investments 25 Limited	London, U.K.	United Kingdom
Alie Street Investments 26 Limited	London, U.K.	United Kingdom
Alie Street Investments 27 Limited	London, U.K.	United Kingdom

Alie Street Investments 28 Limited	London, U.K.	United Kingdom
Almacenadora Serfin, S.A. de C.V.	Mexico City, Mexico	Mexico
Almacenadora Somex, S.A.	Mexico City, Mexico	Mexico
Almazora Holdings S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
Alnitak Sarl	Luxembourg, Luxembourg	Luxembourg
Amarillo Lane, Inc.	Charlotte, NC	Delaware
American Campus Power Plant MT, LLC	Raleigh, NC	North Carolina
AMM Holdings Pty Limited	Sydney, New South Wales, Australia	Australia
Andrew VI, LLC	New York, NY	Delaware
Anzac Peaks, Inc.	Charlotte, NC	Delaware
Apollo Trading LLC	Charlotte, NC	Delaware
Appold Property Management Limited	London, U.K.	United Kingdom
Aquamarine Funding LLC	Charlotte, NC	Delaware
Artic Funding LLC	Charlotte, NC	Delaware
Asesores Argentinos de Seguros S.A.	Buenos Aires, Argentina	Argentina
Asia Investment Consulting Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Asian American Merchant Bank Ltd.	Singapore, Singapore	Singapore
Asset Backed Funding Corporation	Charlotte, NC	Delaware
Asset Transition Management Services, Inc.	Jacksonville, FL	Delaware
Aswan Development Associates, LLC	Miami, FL	Florida
Aswan Village Associates, LLC	Miami, FL	Florida
Athabasca Partnership	New York, NY	Nevada
Atlanta Affordable Housing Fund Limited Partnership	Charlotte, NC	Georgia
Atlantic Equity Corporation	Chicago, IL	North Carolina
Atlantis Trading LLC	Charlotte, NC	Delaware
Audubon-MM Urban Investments II, LLC	Dallas, TX	Texas
Audubon-MM Urban Investments, LLC	Dallas, TX	Texas
Audubon Urban Investments, LLC	Dallas, TX	Texas
Augusta Trading LLC	Charlotte, NC	Delaware
Austin Acquisition Inc.	Charlotte, NC	Delaware
Aztex Associates, L.P.	New York, NY	Delaware
Aztex Corporation	New York, NY	Delaware
B of A Issuance B.V.	Amsterdam, The Netherlands	Netherlands
B.A. International (Cayman) Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
BA 1998 Partners Associates Fund, L.P.	Chicago, IL	Delaware
BA 1998 Partners Fund I, L.P.	Chicago, IL	Delaware
BA 1998 Partners Fund II, L.P.	Chicago, IL	Delaware
BA 1998 Partners Fund LDC	Chicago, IL	Cayman Islands
BA 1998 Partners Master Fund I, L.P.	Chicago, IL	Delaware
BA 1998 Partners Master Fund II, L.P.	Chicago, IL	Delaware
BA Australia Limited	Sydney, New South Wales, Australia	Australia
BA Auto Securitization Corporation	Charlotte, NC	Delaware
BA Capital Advisors Limited	London, U.K.	United Kingdom
BA Capital Company, L.P.	Charlotte, NC	Delaware
BA Co-Invest Fund 2001 (Cayman), L.P.	Chicago, IL	Cayman Islands
BA Co-Invest Fund 2002 (Cayman), L.P.	Chicago, IL	Cayman Islands
BA Coinvest GP, Inc.	Chicago, IL	North Carolina
BA Continuum Costa Rica, Limitada	San Jose, Costa Rica	Costa Rica
BA Continuum India Private Limited	Mumbai, India	India
BA Continuum Mexican Holdings Private Limited	Singapore, Singapore	Singapore
BA Continuum Mexico Administracion S. de R.L. de C.V.	Tlaquepaque, Jalisco, Mexico	Mexico
BA Continuum Mexico, S.C.	Tlaquepaque, Jalisco, Mexico	Mexico
BA Continuum Singapore International Holdings Private Limited	Singapore, Singapore	Singapore
BA Continuum Solutions Private Limited	Hyderabad, India	India

BA Credit Card Funding, LLC	Charlotte, NC	Delaware
BA Custodial Services (Jersey) Limited	St. Helier, Jersey, Channel Islands	Channel Islands
BA Direct Investment Fund M, L.P.	Chicago, IL	Delaware
BA Electronic Data Processing (Guangzhou) Ltd.	Guangzhou, PRC	People's Republic of China
BA Employment Services Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
BA Equity Co-Invest GP, LLC	Charlotte, NC	Delaware
BA Equity Holdings, L.P.	Charlotte, NC	Delaware
BA Equity Investors, Inc.	Chicago, IL	North Carolina
BA Finance Ireland Limited	Dublin, Ireland	Ireland
BA Financial Trading (Luxembourg) Limited	Luxembourg, Luxembourg	Cayman Islands
BA Fund Services (Cayman) Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
BA Fund Services (Jersey) Limited	St. Helier, Jersey, Channel Islands	Channel Islands
BA Global Funding Inc.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
BA GSS International B.V.	Amsterdam, The Netherlands	Netherlands
BA GSS International C.V.	St. Helier, Jersey, Channel Islands	Netherlands
BA GSTS GP LLC	St. Helier, Jersey, Channel Islands	Delaware
BA Insurance Group, Inc.	Charlotte, NC	Delaware
BA Insurance Services, Inc.	Baltimore, MD	Maryland
BA International Underwriters Limited	London, U.K.	United Kingdom
BA Leasing BSC, LLC	San Francisco, CA	Delaware
BA Merchant Services, LLC	Louisville, KY	Ohio
BA Overseas Holdings	George Town, Grand Cayman, Cayman Is.	Cayman Islands
BA Partners Fund III, LLC	Chicago, IL	Delaware
BA Properties, Inc.	Los Angeles, CA	Delaware
BA Residential Securitization LLC	Charlotte, NC	Delaware
BA SBIC Sub, Inc.	Chicago, IL	North Carolina
BA Securities Australia Limited	Sydney, New South Wales, Australia	Australia
BA Technology I, LLC	Charlotte, NC	Delaware
BABC Global Finance Inc.	Toronto, Ontario, Canada	Canada
BAC AAH Capital Funding LLC XI	Chicago, IL	Delaware
BAC AAH Capital Funding LLC I	Chicago, IL	Delaware
BAC AAH Capital Funding LLC II	Chicago, IL	Delaware
BAC AAH Capital Funding LLC III	Chicago, IL	Delaware
BAC AAH Capital Funding LLC IV	Chicago, IL	Delaware
BAC AAH Capital Funding LLC IX	Chicago, IL	Delaware
BAC AAH Capital Funding LLC V	Chicago, IL	Delaware
BAC AAH Capital Funding LLC VI	Chicago, IL	Delaware
BAC AAH Capital Funding LLC VII	Chicago, IL	Delaware
BAC AAH Capital Funding LLC VIII	Chicago, IL	Delaware
BAC AAH Capital Funding LLC X	Chicago, IL	Delaware
BAC AAH Capital Funding LLC XII	Chicago, IL	Delaware
BAC AAH Capital Funding LLC XIII	Chicago, IL	Delaware
BAC AAH Capital Funding LLC XIV	Chicago, IL	Delaware
BAC AAH Capital Funding LLC XIX	Chicago, IL	Delaware
BAC AAH Capital Funding LLC XV	Chicago, IL	Delaware
BAC AAH Capital Funding LLC XVI	Chicago, IL	Delaware
BAC AAH Capital Funding LLC XVII	Chicago, IL	Delaware
BAC AAH Capital Funding LLC XVIII	Chicago, IL	Delaware
BAC AAH Preferred Exchange LLC	Chicago, IL	Delaware
BAC AAH Preferred Exchange LLC II	Chicago, IL	Delaware
BAC AAH Preferred Exchange LLC III	Chicago, IL	Delaware
BAC AAH Preferred Holding LLC	Chicago, IL	Delaware
BAC AAH Preferred Holding LLC II	Chicago, IL	Delaware
BAC AAH Preferred Holding LLC III	Chicago, IL	Delaware
BAC CCC Fund IV Mezzanine Investments, L.L.C.	Chicago, IL	Delaware

BAC CCC Mezzanine Investments, L.L.C.	Chicago, IL	Delaware
BAC CCC Private Equity Investments, Inc.	Chicago, IL	Delaware
BAC Field Services Corporation	Simi Valley, CA	California
BAC Funding Consortium, Inc.	Miami, FL	Florida
BAC Funding, Inc.	Charlotte, NC	Delaware
BAC GP, LLC	Calabasas, CA	Nevada
BAC Home Loans Servicing, LP	Plano, TX	Texas
BAC LB Capital Funding LLC I	Chicago, IL	Delaware
BAC LB Capital Funding LLC II	Chicago, IL	Delaware
BAC LB Capital Funding Trust I	Chicago, IL	Delaware
BAC LB Capital Funding Trust II	Chicago, IL	Delaware
BAC LB Holding LLC I	Chicago, IL	Delaware
BAC LB Holding LLC II	Chicago, IL	Delaware
BAC LB Preferred Exchange LLC I	Chicago, IL	Delaware
BAC LB Preferred Exchange LLC II	Chicago, IL	Delaware
BAC LB Preferred Holding LLC I	Chicago, IL	Delaware
BAC LB Preferred Holding LLC II	Chicago, IL	Delaware
BAC Mezzanine Management I, L.P.	Chicago, IL	Delaware
BAC Mezzanine Management III, L.P.	Chicago, IL	Delaware
BAC Mezzanine Management, Inc.	Chicago, IL	Illinois
BAC North America Holding Company	Charlotte, NC	Delaware
BAC NUBAFA, Inc.	San Francisco, CA	Delaware
BAC Retail Group LLC	Troy, MI	Michigan
BAC Services Company, Inc.	Chicago, IL	Delaware
BAC Strategic Investments B.V.	Amsterdam, The Netherlands	Netherlands
BAC Tax Services Corporation	Simi Valley, CA	California
BACAP Alternative Advisors, Inc.	New York, NY	Missouri
BACAP Alternative Montage Fund, LLC	New York, NY	Delaware
BACAP Alternative Multi-Strategy Fund, LLC	New York, NY	Delaware
BACAP Diversified Real Estate Fund, L.P.	New York, NY	Delaware
BACAP Institutional Multi-Strategy Hedge Fund, Ltd.	New York, NY	Cayman Islands
BACAP Multi-Strategy Hedge Fund, LLC	New York, NY	Delaware
BACAP Multi-Strategy Hedge Fund, Ltd.	New York, NY	Cayman Islands
BACI Triad, LLC	Chicago, IL	Delaware
BACP Europe Fund II, L.P.	Chicago, IL	Delaware
BACP Europe Fund IV M, L.P.	Chicago, IL	Delaware
Bakerton Finance, Inc.	Charlotte, NC	Delaware
BAL Corporate Aviation, LLC	New Castle, DE	Delaware
BAL Energy Holding, LLC	San Francisco, CA	Delaware
BAL Energy Management II, LLC	San Francisco, CA	Delaware
BAL Global Finance (Deutschland) GmbH	Dusseldorf, Germany	Germany
BAL Global Finance (UK) Limited	London, U.K.	United Kingdom
BAL Global Finance Canada Corporation	Toronto, Ontario, Canada	Canada
BAL Investment & Advisory, Inc.	San Francisco, CA	Delaware
BAL Solar I, LLC	San Francisco, CA	Delaware
BAL Solar II, LLC	San Francisco, CA	Delaware
BAL Solar III, LLC	San Francisco, CA	Delaware
Balboa Insurance Company	Irvine, CA	California
Balboa Insurance Services, Inc.	Simi Valley, CA	California
Balboa Life & Casualty LLC	Irvine, CA	Delaware
Balboa Life Insurance Company	Irvine, CA	California
Balboa Life Insurance Company of New York	Irvine, CA	New York
Balboa Warranty Services Corporation	Irvine, CA	Vermont
BALCAP Funding, LLC	San Francisco, CA	Delaware



BALI Funding Limited Partnership	Gloucestershire, U.K.	United Kingdom
BALI Funding Luxembourg Limited	Luxembourg, Luxembourg	United Kingdom
Balkhouse Properties Corp.	New York, NY	Tennessee
Ballantyne Funding LLC	Charlotte, NC	Delaware
Baltic Funding LLC	Charlotte, NC	Delaware
BAMM Funding I LLC	Charlotte, NC	Delaware
BAMS Solutions, Inc.	Louisville, KY	Ohio
BANA (#1) LLC	Charlotte, NC	Delaware
BANA (Gibraltar) Holdings Limited	Gibraltar, Gibraltar	Gibraltar
BANA Alberta Funding Company, ULC	Calgary, Alberta, Canada	Canada
BANA BACM 2000-1 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2000-2 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2001-1 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2001-PB1 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2002-2 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2002-PB2 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2003-1 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2003-2 PAWTUCKET SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2003-2 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2004-1 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2004-2 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2004-3 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2004-4 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2004-5 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2004-6 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2005-1 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2005-2 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2005-3 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2005-4 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2005-5 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2005-6 SB 1 LLC	Charlotte, NC	Delaware
BANA BACM 2006-4 SB 1 LLC	Charlotte, NC	Delaware
BANA BOA-FUNB 2001-3 SB 1 LLC	Charlotte, NC	Delaware
BANA CA Mortgage Company	Charlotte, NC	Delaware
BANA Canada Funding Company Ltd.	Calgary, Alberta, Canada	Canada
BANA CSFB 2002-CKS4 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE HOLDING COMPANY LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2000-1 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2000-2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2001-1 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2001-PB1 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2002-2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2002-PB2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2003-1 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANGER BACM 2003-2 PAWTUCKET SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2003-2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2004-1 SB 1 LLC	Charlotte, NC	Delaware

BANA DEFEASANCE MANAGER BACM 2004-2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2004-3 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2004-4 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2004-5 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2004-6 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2005-1 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2005-2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2005-3 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2005-4 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2005-5 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2005-6 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BACM 2006-4 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER BOA-FUNB 2001-3 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER CSFB 2002-CKS4 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER DORADO/ALVARADO SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER GECCMC 2002-2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER GECCMC 2002-3 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER GECCMC 2003-C1 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER GECCMC 2003-C1 TRIZEC SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER GECCMC 2003-C2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER GECCMC 2004-C1 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER GECCMC 2004-C3 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER GECCMC 2005-C1 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER GECCMC 2005-C2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER MLMT 2004-MKB1 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER MLMT 2005-MKB2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER NLFC 1998-2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER NLFC 1999-1 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER NLFC 1999-2 SB 1 LLC	Charlotte, NC	Delaware
BANA DEFEASANCE MANAGER TENTH VENTURE SB 1 LLC	Charlotte, NC	Delaware
BANA DORADO/ALVARADO SB 1 LLC	Charlotte, NC	Delaware
BANA GA Mortgage Company	Charlotte, NC	Delaware
BANA GECCMC 2002-2 SB 1 LLC	Charlotte, NC	Delaware
BANA GECCMC 2002-3 SB 1 LLC	Charlotte, NC	Delaware
BANA GECCMC 2003-C1 SB 1 LLC	Charlotte, NC	Delaware

BANA GECMC 2003-C1 TRIZEC SB 1 LLC	Charlotte, NC	Delaware
BANA GECMC 2003-C2 SB 1 LLC	Charlotte, NC	Delaware
BANA GECMC 2004-C1 SB 1 LLC	Charlotte, NC	Delaware
BANA GECMC 2004-C3 SB 1 LLC	Charlotte, NC	Delaware
BANA GECMC 2005-C1 SB 1 LLC	Charlotte, NC	Delaware
BANA GECMC 2005-C2 SB 1 LCL	Charlotte, NC	Delaware
BANA Holding Corporation	Charlotte, NC	Delaware
BANA LP, LLC	Calabasas, CA	Delaware
BANA MLMT 2004-MKB1 SB 1 LLC	Charlotte, NC	Delaware
BANA MLMT 2005-MKB2 SB 1 LLC	Charlotte, NC	Delaware
BANA NLFC 1998-2 SB 1 LLC	Charlotte, NC	Delaware
BANA NLFC 1999-1 SB 1 LLC	Charlotte, NC	Delaware
BANA NLFC 1999-2 SB 1 LLC	Charlotte, NC	Delaware
BANA OR Mortgage Company	Charlotte, NC	Delaware
BANA Residuals, LLC	Charlotte, NC	Delaware
BANA RI Mortgage Company	Charlotte, NC	Delaware
BANA Swiss Funding S.a.r.l. Limited	Luxembourg, Luxembourg	England & Wales
BANA TENTH VENTURE SB 1 LLC	Charlotte, NC	Delaware
Banc of America Advisory Services, LLC	Charlotte, NC	Delaware
Banc of America Arena Community Development LLC	Charlotte, NC	Delaware
Banc of America Bridge LLC	Charlotte, NC	Delaware
Banc of America California Community Venture Fund, LLC	Chicago, IL	Delaware
Banc of America Capital Access Funds Management A, L.P.	Chicago, IL	Delaware
Banc of America Capital Access Funds Management, LLC	Chicago, IL	Delaware
Banc of America Capital Holdings V, L.P.	Charlotte, NC	Delaware
Banc of America Capital Holdings, L.P.	Charlotte, NC	Delaware
Banc of America Capital Investors SBIC, L.P.	Charlotte, NC	Delaware
Banc of America Capital Investors V, L.P.	Charlotte, NC	Delaware
Banc of America Capital Investors, L.P.	Charlotte, NC	Delaware
Banc of America Capital Management (Ireland), Limited	Dublin, Ireland	Ireland
Banc of America Card Servicing Corporation	Phoenix, AZ	Arizona
Banc of America CDC Special Holding Company, Inc.	Charlotte, NC	North Carolina
Banc of America CDE I, LLC	Baltimore, MD	Delaware
Banc of America CDE II, LLC	Baltimore, MD	Delaware
Banc of America CDE III, LLC	Charlotte, NC	North Carolina
Banc of America CDE IV, LLC	Charlotte, NC	North Carolina
Banc of America CDE V, LLC	Charlotte, NC	North Carolina
Banc of America CDE, LLC	Baltimore, MD	Maryland
Banc of America Co-Invest Fund 2001, L.P.	Chicago, IL	Delaware
Banc of America Co-Invest Fund 2002, L.P.	Chicago, IL	Delaware
Banc of America Commercial, LLC	New York, NY	Georgia
Banc of America Commercial Mortgage Inc.	Charlotte, NC	Delaware
Banc of America Community Development Corporation	Charlotte, NC	North Carolina
Banc of America Community Holdings, Inc.	Charlotte, NC	Missouri
Banc of America Community Housing Investment Fund II LLC	Chicago, IL	Delaware
Banc of America Community Housing Investment Fund LLC	Chicago, IL	Delaware
Banc of America Consumer Card Holdings Corporation	Charlotte, NC	North Carolina
Banc of America Consumer Card Services, LLC	Charlotte, NC	North Carolina
Banc of America Development, Inc.	Charlotte, NC	Missouri
Banc of America Dutch Auction Preferred Corporation	Charlotte, NC	Delaware
Banc of America E-Commerce Holdings, Inc.	Charlotte, NC	Delaware

Banc of America Energy & Power Facilities Leasing I, Inc.	San Francisco, CA	Delaware
Banc of America Financial Products, Inc.	Chicago, IL	Delaware
Banc of America FSC Holdings, Inc.	San Francisco, CA	Delaware
Banc of America Funding Corporation	Charlotte, NC	Delaware
Banc of America Funding LLC	Charlotte, NC	Delaware
Banc of America Historic Capital Assets LLC	Charlotte, NC	Delaware
Banc of America Historic Investments Partnership	Concord, CA	Illinois
Banc of America Historic New Ventures, LLC	Baltimore, MD	Delaware
Banc of America Historic Ventures, LLC	Charlotte, NC	North Carolina
Banc of America HTC Investments LLC	Boston, MA	Massachusetts
Banc of America Insurance Services, Inc.	Baltimore, MD	Maryland
Banc of America Investment Advisors, Inc.	Boston, MA	Delaware
Banc of America Investment Leasing Co., Ltd.	Tokyo, Japan	Japan
Banc of America Large Loan, Inc.	Dover, DE	Delaware
Banc of America Leasing & Capital, LLC	San Francisco, CA	Delaware
Banc of America Leasing Ireland Co., Limited	Dublin, Ireland	Ireland
Banc of America Management, LLC	Charlotte, NC	Delaware
Banc of America Management LLC I	Chicago, IL	Delaware
Banc of America Management LLC III	Chicago, IL	Delaware
Banc of America Merchant Services, LLC	Atlanta, GA	Delaware
Banc of America Middle Market Funding LLC	Charlotte, NC	Delaware
Banc of America Mortgage Capital Corporation	Charlotte, NC	North Carolina
Banc of America Mortgage Securities, Inc.	Charlotte, NC	Delaware
Banc of America Neighborhood Services Corporation	Charlotte, NC	North Carolina
Banc of America Practice Solutions, Inc.	Columbus, OH	Ohio
Banc of America Preferred Funding Corporation	Charlotte, NC	Delaware
Banc of America Private Placement Funding Group LLC	Charlotte, NC	Delaware
Banc of America Public and Institutional Financial Funding, LLC	San Francisco, CA	Delaware
Banc of America Public Capital Corp	Charlotte, NC	Kansas
Banc of America Securities (India) Private Limited	Mumbai, India	India
Banc of America Securities Asia Limited	Hong Kong, PRC	Hong Kong, PRC
Banc of America Securities Canada Co.	Halifax, Nova Scotia	Canada
Banc of America Securities Canada Holding Corp.	Charlotte, NC	Delaware
Banc of America Securities Holdings Corporation	Charlotte, NC	Delaware
Banc of America Securities-Japan, Inc.	Tokyo, Japan	Illinois
Banc of America Securities Limited	London, U.K.	United Kingdom
Banc of America Securities LLC	New York, NY	Delaware
Banc of America Securities, Casa de Bolsa, S.A. de C.V., Grupo Financiero Bank of America	Mexico City, Mexico	Mexico
Banc of America Securitization Holding Corporation	Charlotte, NC	Delaware
Banc of America Specialist, Inc.	New York, NY	New York
Banc of America Strategic Investments Corporation	Charlotte, NC	Delaware
Banc of America Strategic Investments LLC	Charlotte, NC	Delaware
Banc of America Strategic Ventures, Inc.	Charlotte, NC	Delaware
Banc of America Structured Notes, Inc.	Charlotte, NC	Delaware
BancAmerica Capital Holdings II, L.P.	Chicago, IL	Delaware
BancAmerica Capital Investors II, L.P.	Chicago, IL	Delaware
BancAmerica Capital Investors SBIC II, L.P.	Chicago, IL	Delaware
BancAmerica Coinvest Fund 2000, L.P.	Chicago, IL	Delaware
BancBoston Aircraft Leasing Inc.	Boston, MA	Delaware
BancBoston Capital Co-Investment Partners (2000) LP	Boston, MA	Delaware
BancBoston Capital Co-Investment Partners (2001) LP	Boston, MA	Delaware
BancBoston Capital Holdings Limited	London, U.K.	United Kingdom
BancBoston Capital ICP Partners 2 LP	Boston, MA	Delaware

BancBoston Capital ICP Partners 3 LP	Boston, MA	Delaware
BancBoston Capital ICP Partners 3-A L.P.	Boston, MA	Delaware
BancBoston Capital ICP Partners LP	Boston, MA	Delaware
BancBoston Capital Money Markets Limited	London, U.K.	United Kingdom
BancBoston Capital Private Equity Partners LP	Boston, MA	Delaware
BancBoston Capital, Inc.	Boston, MA	Massachusetts
BancBoston Insurance Agency of Rhode Island, Inc.	Pascoag, RI	Rhode Island
BancBoston Investments Inc.	Boston, MA	Massachusetts
BancBoston Leasing Services Inc.	Boston, MA	Massachusetts
BancBoston Ventures Inc.	Boston, MA	Massachusetts
Banco Merrill Lynch de Investimentos S.A.	Sao Paulo, Brazil	Brazil
Banco Santander, S.A.	Mexico City, Mexico	Mexico
Banco Santander, S.A. Fideicomiso 100740	Mexico City, Mexico	Mexico
Banco Santander, S.A. Fideicomiso GFSSLPT	Mexico City, Mexico	Mexico
Bank of America (Hawaii) Insurance Agency, Inc.	Honolulu, HI	Hawaii
Bank of America Auto Receivables Securitization, LLC	Charlotte, NC	Delaware
Bank of America California, National Association	San Francisco, CA	United States of America
Bank of America Canada	Toronto, Ontario, Canada	Canada
Bank of America Canada Specialty Group Ltd.	Mississauga, Ontario, Canada	Canada
Bank of America Capital Advisors LLC	Chicago, IL	Delaware
Bank of America Capital Corporation	Chicago, IL	Delaware
Bank of America Charitable Foundation, Inc., The	Charlotte, NC	Delaware
Bank of America Corporation	Charlotte, NC	Delaware
Bank of America Custodial Services (Ireland) Limited	Dublin, Ireland	Ireland
Bank of America Fund Services (Ireland) Limited	Dublin, Ireland	Ireland
Bank of America (GSS) Limited	London, U.K.	United Kingdom
Bank of America GSS Nominees Limited	London, U.K.	England & Wales
Bank of America Healthcare Limited	London, U.K.	United Kingdom
Bank of America Malaysia Berhad	Kuala Lumpur, Malaysia	Malaysia
Bank of America Mexico, S.A., Institucion de Banca Multiple, Grupo Financiero Bank of America	Mexico City, Mexico	Mexico
Bank of America Mortgage Securities, Inc.	Charlotte, NC	Delaware
Bank of America, National Association	Charlotte, NC	United States of America
Bank of America National Trust Delaware	Wilmington, DE	United States of America
Bank of America Negocios e Participacoes Ltda.	Sao Paulo, Brazil	Brazil
Bank of America Oregon, National Association	Portland, OR	United States of America
Bank of America Overseas Corporation	Charlotte, NC	United States of America
Bank of America Reinsurance Corporation	Burlington, VT	Vermont
Bank of America Representacoes Ltda.	Sao Paulo, Brazil	Brazil
Bank of America Rhode Island, National Association	Providence, RI	United States of America
Bank of America Securitization Investment Trust LLC	Wilmington, DE	Delaware
Bank of America Singapore Limited	Singapore, Singapore	Singapore
Bank of America Trust and Banking Corporation (Bahamas) Limited	Nassau, Bahamas	Bahamas
Bank of America Trust and Banking Corporation (Cayman) Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Bank of America Trustees Limited	London, U.K.	England & Wales
Bank of America Ventures	Foster City, CA	California
BankAmerica Acceptance Corp.	Jacksonville, FL	Delaware
BankAmerica Capital I	Charlotte, NC	Delaware
BankAmerica Capital II	Charlotte, NC	Delaware
BankAmerica Capital III	Charlotte, NC	Delaware
BankAmerica Capital IV	Charlotte, NC	Delaware
BankAmerica Institutional Capital A	San Francisco, CA	Delaware
BankAmerica Institutional Capital B	San Francisco, CA	Delaware
BankAmerica International Financial Corporation	San Francisco, CA	United States of America
BankAmerica International Investment Corporation	Chicago, IL	United States of America

BankAmerica Investment Corporation	Chicago, IL	Delaware
BankAmerica Nominees (1993) Pte Ltd.	Singapore, Singapore	Singapore
BankAmerica Nominees (Hong Kong) Ltd.	Hong Kong, PRC	Hong Kong, PRC
BankAmerica Nominees (Singapore) Pte. Ltd.	Singapore, Singapore	Singapore
BankAmerica Nominees Limited (London)	London, U.K.	United Kingdom
BankAmerica Realty Finance, Inc.	Los Angeles, CA	Delaware
BankAmerica Realty Services, Inc.	San Francisco, CA	Delaware
BankAmerica Special Assets Corporation	San Francisco, CA	Delaware
BankBoston Administracao Ltda.	Sao Paulo, Brazil	Brazil
BankBoston Capital Trust I	Boston, MA	Delaware
BankBoston Capital Trust II	Boston, MA	Delaware
BankBoston Capital Trust III	Boston, MA	Delaware
BankBoston Capital Trust IV	Boston, MA	Delaware
BankBoston Co-Investment Partners (1998) L.P.	Boston, MA	Delaware
BankBoston Co-Investment Partners (1999) L.P.	Boston, MA	Delaware
BankBoston International Leasing LLC	Providence, RI	Delaware
Bankers Insurance Company, Ltd.	Hamilton, Bermuda	Delaware
BAPCC II, LLC	San Francisco, CA	Delaware
Bardin Road Ventures Inc.	New York, NY	Texas
Barnett Capital I	Jacksonville, FL	Delaware
Barnett Capital II	Jacksonville, FL	Delaware
Barnett Capital III	Jacksonville, FL	Delaware
BAS Capital Funding Corporation	Chicago, IL	Delaware
BAS Oak Management, LLC	San Francisco, CA	Delaware
BAS Oak X, LLC	San Francisco, CA	Delaware
BAS Securitization LLC	Charlotte, NC	Delaware
BAS/SOFI Management, LLC	New York, NY	Delaware
BAS/SOFI VI, LLC	New York, NY	Delaware
BASCFC-Maxcom Holdings I, LLC	Chicago, IL	Delaware
Battersea Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Battle River Terminal ULC	Calgary, Alberta, Canada	Canada
BAVP, LP	Foster City, CA	Delaware
Bay 2 Bay Leasing LLC	San Francisco, CA	Delaware
Bay Area Credit Services, LLC	New York, NY	Delaware
BayBanks Mortgage Corp.	Boston, MA	Massachusetts
BBC Co-Investment Partners (1998) LP	Boston, MA	Delaware
BBI Management Co. LLC	Boston, MA	Massachusetts
BBI Switch LP	Boston, MA	Delaware
BBV Management Co. LLC	Boston, MA	Massachusetts
BBV Switch LP	Boston, MA	Delaware
Beemster Bay B.V.	Amsterdam, The Netherlands	Netherlands
BEG Nominees (Paroc) Carried Interest Partnership, L.P.	Chicago, IL	Delaware
Ben Franklin/Progress Capital Fund LP	Blue Bell, PA	Delaware
Benson Nominees Limited	London, U.K.	England
Berendon LLC	New York, NY	Delaware
Berndale Securities Limited	Melbourne, Victoria, Australia	Australia
Bighorn Investments Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Birchwood Funding LLC	Charlotte, NC	Delaware
BIRMSON, L.L.C.	Wilton, CT	Alabama
BJCC, Inc.	Wilton, CT	Delaware
BKB Foreign Sales Corporation	Christiansted, St.Thomas, U.S. V.I.	Virgin Islands
Black Mountain Funding LLC	Charlotte, NC	Delaware
Blackwood Run Trading LLC	Charlotte, NC	Delaware
Blazer (Cayman) Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands

Blue Finn Holdings Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Blue Ridge Investments, L.L.C.	Charlotte, NC	Delaware
Bluejay LLC	New York, NY	Delaware
Bluestar Holdings Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
BoA Internationaal Krediet B.V.	Amsterdam, The Netherlands	Netherlands
BOA Investment Fund III, LLC	Charlotte, NC	North Carolina
BOA Investment Fund IV, LLC	Charlotte, NC	North Carolina
BOA Investment Fund V, LLC	Charlotte, NC	North Carolina
BoA Lending L.L.P.	Charlotte, NC	Delaware
BoA Luxembourg S.a.r.l. / B.V.	Luxembourg, Luxembourg	Netherlands
BoA Netherlands Cooperatieve U.A.	Amsterdam, The Netherlands	Netherlands
BoA Trustee Services Limited	London, U.K.	United Kingdom
BOA/Mermart Joint Venture	San Diego, CA	California
Boatmen's Insurance Agency, Inc.	St. Louis, MO	Missouri
Bodiam Hill Limited	London, U.K.	United Kingdom
BofA AF Holding Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
BofA Commodities, Inc.	New York, NY	Delaware
Bond Products Depositor LLC	Charlotte, NC	Delaware
Bonifazius Mortgage Investments LLC	Wilmington, DE	Delaware
Boston Centros de Inversion S.A.	Buenos Aires, Argentina	Argentina
Boston International Holdings Corporation	Boston, MA	Massachusetts
Boston Overseas Financial Corporation	New York, NY	United States of America
Boston Overseas Financial Corporation S.A.	Buenos Aires, Argentina	Argentina
Boston Overseas Holding Corporation	Boston, MA	Massachusetts
Boston Overseas Private Equity LLC	Boston, MA	Delaware
Boston Securities S.A. Sociedad de Bolsa	Buenos Aires, Argentina	Argentina
Boston World Holding Corporation	Boston, MA	Massachusetts
Bracebridge Corporation	Wilmington, DE	Delaware
BRCK Holdings I AB	Stockholm, Sweden	Sweden
BRCK Holdings II AB	Stockholm, Sweden	Sweden
Breckenridge Investments Limited	London, U.K.	England
Bridger Holdings LLC	Mill Valley, CA	Delaware
Bridgewater Bay Limited Liability Partnership	London, U.K.	United Kingdom
Brigibus Limited	London, U.K.	United Kingdom
Bristol Pines Limited Partnership	Washington, DC	District of Columbia
Bristol Pines Manager LLC	Baltimore, MD	District of Columbia
Broadcort Corporation	New York, NY	New York
BRV Capital II Ltda	George Town, Grand Cayman, Cayman Is.	Brazil
BTAC V L.L.C.	New York, NY	Delaware
Bullseye Global Real Estate Partners LP	New York, NY	Delaware
Bullseye Holdco I LLC	New York, NY	Delaware
Bullseye Holdco II LLC	New York, NY	Delaware
Bullseye Real Estate Advisors LLC	New York, NY	Delaware
Bullseye Real Estate Associates LP	New York, NY	Delaware
Business Lenders, LLC	New York, NY	Delaware
C&S Premises-SPE, Inc.	Charlotte, NC	North Carolina
Cabernet I, LLC	New York, NY	Delaware
Cabot Investments	London, U.K.	Cayman Islands
Caledonia Trading LLC	Charlotte, NC	Delaware
Calnevari Holdings, Inc.	Charlotte, NC	Delaware
CalSTRS/Banc of America Capital Access Fund III, LLC	Chicago, IL	Delaware
CalSTRS/Banc of America Capital Access Fund, LLC	Chicago, IL	Delaware
Calvada Lane Pty Limited	Charlotte, NC	Australia
CAP, Inc.	New York, NY	Delaware

Capacitor, LLC	Las Vegas, NV	Delaware
Carlow Holdings Trust	Dublin, Ireland	Ireland
Carolina Investments Limited	London, U.K.	United Kingdom
Carrara Lane Pty Limited	Charlotte, NC	Australia
Carringgate Limited	London, U.K.	United Kingdom
Casa de Bolsa Santander, S.A. de C.V.	Mexico City, Mexico	Mexico
Caswell Park, Inc.	Charlotte, NC	Delaware
Catherine III, LLC	New York, NY	Delaware
CBT Realty Corporation	Providence, RI	Connecticut
Central Park Development Group, LLC	Tampa, FL	Florida
CFC International Capital Markets, Limited	London, U.K.	England
CFC International Mauritius Limited	Port Louis, Mauritius	Republic of Mauritius
CH MLOX Pleiades 3	Tokyo, Japan	Japan
Champion Hills Funding LLC	Charlotte, NC	Delaware
Charlotte Gateway Village, LLC	Charlotte, NC	North Carolina
Charlotte Transit Center, Inc.	Charlotte, NC	North Carolina
Cherry Park LLC	Charlotte, NC	Delaware
Chester Property & Services Limited	Chester, England	England
Chetwynd Nominees Limited	London, U.K.	England
CHL Transfer Corp.	Calabasas, CA	Delaware
Church Street Housing Partners I, LLC	Orlando, FL	Florida
Church Street Retail Partners I, LLC	Orlando, FL	Florida
Circulos OCA S.A.	Montevideo, Uruguay	Uruguay
City Hall Lofts, L.P.	Kansas City, MO	Kansas
Citygate Nominees Limited	London, U.K.	England
CIVC Partners Fund, L.P.	Chicago, IL	Delaware
CIVC Partners Fund, LLC	Chicago, IL	Delaware
Clark Street Redevelopment Corporation	St. Louis, MO	Missouri
Clipper Mill Federal LLC	Baltimore, MD	Maryland
CM REO S1 LLC	New York, NY	Delaware
CNBC Leasing LLC	Chicago, IL	Delaware
Cold Feet, L.L.C.	Chicago, IL	Delaware
Colonial Funding LLC	Charlotte, NC	Delaware
Columbia Diversified Alpha Fund (Master), Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Columbia Diversified Alpha Fund, LP	New York, NY	Delaware
Columbia Management Advisors, LLC	Boston, MA	Delaware
Columbia Management Distributors, Inc.	Boston, MA	Massachusetts
Columbia Management Financial Services, LLC	Boston, MA	Delaware
Columbia Management Group, LLC	Boston, MA	Delaware
Columbia Management Pte. Ltd.	Singapore, Singapore	Singapore
Columbia Management Services, Inc.	Boston, MA	Massachusetts
Columbia Research Market Neutral (Master), Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Columbia Research Market Neutral, L.P.	Boston, MA	Delaware
Columbia Select Large Cap Growth Fund, Variable Series	Boston, MA	Massachusetts
Columbia Select Opportunities Fund, Variable Series	Boston, MA	Massachusetts
Columbia Value and Restructuring Fund, Variable Series	Boston, MA	Massachusetts
Columbia Wanger Asset Management, L.P.	Chicago, IL	Delaware
Columbus Bay Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Columbus Square II LLC	St. Louis, MO	Missouri
Columbus Square LLC	Kansas City, MO	Missouri
Concert Funding Number 1 Limited	London, U.K.	England
Concert Mortgages Holdings Limited	London, U.K.	England
Concert Mortgages Limited	London, U.K.	England
Continental Finanziaria S.P.A.	Milan, Italy	Italy



Continental Illinois Venture Corporation	Chicago, IL	Delaware
Continental Servicios Corporativos, S.A. de C.V.	Mexico City, Mexico	Mexico
Conversus Asset Management, LLC	Chicago, IL	Delaware
Coral Hill LLC	Charlotte, NC	Delaware
Corfe Hill Limited	London, U.K.	United Kingdom
Corporate Leasing Facilities Limited	London, U.K.	England & Wales
Corporate Properties Services, Inc.	Wilmington, DE	Delaware
Cortlandt Realty Associates I, L.P.	New York, NY	Delaware
Countryside SA Holdings, LLC	Dallas, TX	Texas
Countrywide Alternative Asset Management Inc.	Calabasas, CA	Delaware
Countrywide Alternative Investments Inc.	Calabasas, CA	Delaware
Countrywide Asset Management Corp.	Calabasas, CA	California
Countrywide Capital I	Calabasas, CA	Delaware
Countrywide Capital II	Calabasas, CA	Delaware
Countrywide Capital III	Calabasas, CA	Delaware
Countrywide Capital IV	Calabasas, CA	Delaware
Countrywide Capital V	Calabasas, CA	Delaware
Countrywide Capital VI	Calabasas, CA	Delaware
Countrywide Capital VII	Calabasas, CA	Delaware
Countrywide Capital VIII	Calabasas, CA	Delaware
Countrywide Capital IX	Calabasas, CA	Delaware
Countrywide Capital Markets Asia (HK) Limited	Hong Kong, PRC	Hong Kong, PRC
Countrywide Capital Markets Asia Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Countrywide Capital Markets, LLC	Calabasas, CA	California
Countrywide Commercial JPI LLC	Calabasas, CA	Delaware
Countrywide Commercial Mortgage Capital, Inc.	Calabasas, CA	Delaware
Countrywide Commercial Real Estate Finance, Inc.	Calabasas, CA	California
Countrywide Financial Corporation	Calabasas, CA	Delaware
Countrywide Foundation, The	Calabasas, CA	California
Countrywide Hillcrest I, Inc.	Calabasas, CA	California
Countrywide Home Loans of Minnesota, Inc.	Eden Prairie, MN	Minnesota
Countrywide Home Loans of Tennessee, Inc.	Brentwood, TN	Tennessee
Countrywide Home Loans of Texas, Inc.	Calabasas, CA	Texas
Countrywide Home Loans, Inc.	Calabasas, CA	New York
Countrywide Insurance Services of Texas, Inc.	Plano, TX	Texas
Countrywide International Consulting Services, LLC	Calabasas, CA	Delaware
Countrywide International GP Holdings, LLC	Calabasas, CA	Delaware
Countrywide International Holdings, Inc.	Calabasas, CA	Delaware
Countrywide International Technology Holdings Limited	St. Peter Port, Guernsey, Channel Islands	Island of Guernsey
Countrywide JV Technology Holdings Limited	St. Peter Port, Guernsey, Channel Islands	Island of Guernsey
Countrywide LFT LLC	Calabasas, CA	Delaware
Countrywide Management Corporation	Calabasas, CA	Delaware
Countrywide Mortgage Ventures, LLC	Calabasas Hills, CA	Delaware
Countrywide Securities Corporation	Calabasas, CA	California
Countrywide Servicing Exchange	Calabasas, CA	California
Countrywide Sunfish Management LLC	Calabasas, CA	Delaware
Countrywide Warehouse Lending	Calabasas, CA	California
Coventry Village Apartments, Inc.	Nashville, TN	Tennessee
CP Development Group 2, LLC	Tampa, FL	Florida
CPDG7, LLC	Tampa, FL	Florida
CP Development Group 3, LLC	Tampa, FL	Florida
CPI Ballpark Investments Ltd.	Port Louis, Mauritius	Mauritius
CREDO Trust	Hamilton, Bermuda	Bermuda
Crockett Funding II, Inc.	Charlotte, NC	Delaware

Crockett Funding LLC	Charlotte, NC	Delaware
Cross Creek Funding LLC	Charlotte, NC	Delaware
CSC Associates, L.P.	Marietta, GA	Georgia
CSC Futures Inc.	Calabasas, CA	California
CSF Holdings, Inc.	Tampa, FL	Florida
CTC Real Estate Services	Simi Valley, CA	California
Cupples Development, L.L.C.	St. Louis, MO	Missouri
Cupples Garage, L.L.C.	St. Louis, MO	Missouri
Currency Partners LLC	New York, NY	Delaware
Currency Partners Sub-Fund I LLC	New York, NY	Delaware
CW Insurance Group, LLC	Irvine, CA	California
CW Reinsurance Company	Burlington, VT	Vermont
CW Securities Holdings, Inc.	Calabasas, CA	Delaware
CW (UK) Services Limited	Dartford, United Kingdom	United Kingdom
CW UKTechnology Limited	Dartford, United Kingdom	United Kingdom
CWABS II, Inc.	Calabasas, CA	Delaware
CWABS, Inc.	Calabasas, CA	Delaware
CWALT, Inc.	Calabasas, CA	Delaware
CWB Community Assets, Inc.	Thousand Oaks, CA	Delaware
CWB Mortgage Ventures, LLC	Thousand Oaks, CA	Delaware
CWB Venture Management Corporation	Thousand Oaks, CA	Delaware
CWHEQ, Inc.	Calabasas, CA	Delaware
CWIBH, Inc.	Calabasas, CA	Delaware
CWMBS II, Inc.	Calabasas, CA	Delaware
CWMBS, Inc.	Calabasas, CA	Delaware
CWRBS, Inc.	Calabasas, CA	Delaware
CWTechSolutions Limited	Dartford, United Kingdom	United Kingdom
Cypress Point Trading LLC	Charlotte, NC	Delaware
Cypress Tree CLAIF Funding LLC	Charlotte, NC	Delaware
Dacion Corp.	New York, NY	New York
Dartmouth Holdings Limited	Hong Kong, Hong Kong	Hong Kong, PRC
Davidson Partners Limited	Toronto, Ontario, Canada	Canada
Debt Clear Recoveries & Investigations Limited	Manchester, United Kingdom	United Kingdom
Destination Hotels International Co., Ltd.	Hong Kong, Hong Kong	Thailand
Destination Hotels International Ltd.	Bangkok, Thailand	Virgin Islands
Destination Properties (Cha-Am) Co., Ltd.	Bangkok, Thailand	Thailand
Destination Properties (Eastern Seaboard) Co., Ltd.	Bangkok, Thailand	Thailand
DFO Partnership	San Francisco, CA	New York
Diamond Springs Trading LLC	Charlotte, NC	Delaware
Diversified Global Futures Fund LLC	New York, NY	Delaware
Diversified Global Markets Fund Ltd.	New York, NY	Cayman Islands
Dollis Hill Limited	London, U.K.	United Kingdom
Dorton B.V.	Amsterdam, The Netherlands	Netherlands
Dover Mortgage Capital 2005-A Corporation	Charlotte, NC	Delaware
Dover Mortgage Capital Corporation	Charlotte, NC	Delaware
Dover Two Mortgage Capital 2005-A Corporation	Charlotte, NC	Delaware
Dover Two Mortgage Capital Corporation	Charlotte, NC	Delaware
Dresdner Kleinwort Pfandbriefe Investments, Inc.	Charlotte, NC	Delaware
DSP Merrill Lynch Capital Limited	Mumbai, India	India
DSP Merrill Lynch Limited	Mumbai, India	India
DSP Merrill Lynch Securities Trading Limited	Mumbai, India	India
DSP Merrill Lynch Trust Services Limited	Mumbai, India	India
Dunes Funding LLC	Charlotte, NC	Delaware
Eagle Corporation, The	Boston, MA	Massachusetts

Eagle Investments S.A., The	Montevideo, Uruguay	Uruguay
Eaglewood Apartments, LLC	Tampa, FL	Florida
Eaglewood Course Development, LLC	Tampa, FL	Florida
Eban Incorporated	Dallas, TX	Texas
Eban Village I, Ltd.	Dallas, TX	Texas
Eban Village II, Ltd.	Dallas, TX	Texas
Echo Canyon Park LLC	Charlotte, NC	Delaware
Edificaciones Arendonk, S.L.	Madrid, Spain	Spain
Edward IV, LLC	New York, NY	Delaware
EFP (Cayman) Funding 2006-1 Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
EFP (Cayman) Funding 2006-2 Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
EFP (Cayman) Funding 2006-3 Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
EFP (Cayman) Funding I Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
EFP (Cayman) Funding II Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
EFP (Hong Kong) Funding I Limited	Hong Kong, SAR	Hong Kong, PRC
EFP (Hong Kong) Funding II Partnership	Hong Kong, SAR	Hong Kong, PRC
EFP Netherlands Investment II, V.O.F.	Amsterdam, The Netherlands	Netherlands
EFP Netherlands Investment, B.V.	Amsterdam, The Netherlands	Netherlands
Egan Crest Investments, LLC	Charlotte, NC	Delaware
EGB Podstawowy Niestandaryzowany Sekurytyzacyjny Fundusz Inwestycyjny	Warsaw, Poland	Poland
EGB-Skarbiec Bis Powizany Fundusz Inwestycyjny Zamknity	Warsaw, Poland	Poland
EGB-Skarbiec Powizany Fundusz Inwestycyjny Zamknity	Warsaw, Poland	Poland
Eight Star Investments, L.L.C.	Kansas City, MO	Missouri
Electra Leasing LLC	Boston, MA	Massachusetts
ELHV Inc.	New York, NY	Delaware
Elizabeth VI, LLC	New York, NY	Delaware
Elmfield Investments Limited	London, U.K.	United Kingdom
Elmsleigh Funding, Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ELT Ltd.	Charlotte, NC	Delaware
EM Cobranza S de RL de CV	New York, NY	Mexico
EM Government Bond Investments LP	New York, NY	Delaware
EM Structured Investments, LLC	New York, NY	Delaware
Empatheia II LLC	New York, NY	Delaware
Endeavour, LLC	Babylon, NY	Delaware
Enhanced P-2 Partnership	New York, NY	Delaware
Enhanced Trust 1998 Series B	New York, NY	Delaware
Enhanced Trust 1998 Series P-1	New York, NY	Delaware
Enhanced Trust Series 2000-2	New York, NY	Delaware
Enhanced Trust Series 2003-A	New York, NY	Delaware
Enhanced Trust Series 2003-C	New York, NY	Delaware
eoTek, LLC	New York, NY	Delaware
EQCC Asset Backed Corporation	Evergreen, CO	Delaware
EQCC Receivables Corporation	Las Vegas, NV	Delaware
EquiCredit Corporation of America	Las Vegas, NV	Delaware
Equity Analytics, LLC	Jacksonville, FL	Delaware
Equity Finance Delaware, LLC	Scottsdale, AZ	Delaware
Equity Margins Ltd.	New York, NY	Delaware
Equity Margins Nominees Limited	Melbourne, Victoria, Australia	Australia
Equity/Protect Reinsurance Company	Melbourne, Victoria, Australia	Australia
Europe Card Services General Partner Limited	Jacksonville, FL	Turks & Caicos Islands
Europe Card Services Partners (Scotland) LP	Grand Cayman, Cayman Islands	Cayman Islands
Event-Driven & Credit HedgeAccess II LLC	Edinburgh, Scotland	Scotland
Everest Funding LLC	New York, NY	Delaware
	Charlotte, NC	Delaware

Excelsior Buyout Management, LLC	Stamford, CT	Delaware
Excelsior Buyout Partners, LLC	Stamford, CT	Delaware
F. R. Holdings, Inc.	San Francisco, CA	Nevada
Fairfield Nominees Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Fallon Lane II, Inc.	Charlotte, NC	Delaware
Fallon Lane LLC	Charlotte, NC	Delaware
FBF Insurance Agency, Inc.	Avon, MA	Massachusetts
FCA Company, LLC	Providence, RI	Rhode Island
FCP ML Euro FEVR	Paris, France	France
FCP ML Global Umbrella	Paris, France	France
FDS Financial Data Services Limited	Dublin, Ireland	Ireland
Federal Street Investments S.A.	Montevideo, Uruguay	Uruguay
Federal Street Shipping LLC	Boston, MA	Delaware
Fernhill Holding, Inc.	San Francisco, CA	California
Ferrybridge Investments Limited	London, U.K.	England
FF Mortgage Corporation	New York, NY	Delaware
FFG Property Holding Corp.	Providence, RI	Rhode Island
FHA Company, LLC	Providence, RI	Rhode Island
FIA (Gibraltar) Holdings Limited	Gibraltar, Gibraltar	Gibraltar
FIA (Gibraltar) SLP Holdings Limited	Gibraltar, Gibraltar	Gibraltar
FIA Card Services, National Association	Wilmington, DE	United States of America
FIA Funding Luxembourg Limited	Luxembourg, Luxembourg	England & Wales
FIA Holdings S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
FIA Holdings, LP	Edinburgh, Scotland	Scotland
FIA Swiss Funding Limited	Luxembourg, Luxembourg	England & Wales
Fideicomiso GSSLPT	Mexico City, Mexico	Mexico
Fiduciary Services Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Fiduciary Services (UK) Limited	London, U.K.	England
FIM Funding, Inc.	Boston, MA	Massachusetts
Financial Centre Insurance Agency, Inc.	Boston, MA	Massachusetts
Financial Data Services, Inc.	Jacksonville, FL	Florida
Financial ServiceSolutions Information Systems, LLC	Charlotte, NC	Delaware
Financial ServiceSolutions, LLC	Charlotte, NC	Delaware
Finch Funding LLC	Charlotte, NC	Delaware
Finsbury Square Limited Partnership	Washington, DC	District of Columbia
Finsbury Square Manager LLC	Washington, DC	District of Columbia
First 165 Properties Corp.	New York, NY	Delaware
First Bank of Pinellas County Land Corporation	Tampa, FL	Florida
First Capital Corporation of Boston	Boston, MA	Massachusetts
First Franklin Financial Corporation	San Jose, CA	Delaware
First Permanent Financial Services Pty Ltd	Sydney, Australia	Australia
First Permanent Securities Limited	Sydney, Australia	Australia
First Permanent Securities Mortgage Warehouse Trust 2000-1	Sydney, Australia	Australia
First Permanent Super Prime RMBS Trust 2006-1	Sydney, Australia	Australia
First Republic Investment Management, Inc.	San Francisco, CA	New York
First Republic Preferred Capital Corporation	San Francisco, CA	Nevada
First Republic Preferred Capital Corporation II	San Francisco, CA	Nevada
First Republic Securities Company, LLC	San Francisco, CA	Nevada
First Republic Wealth Advisors, LLC	San Francisco, CA	Nevada
Firstval Properties, Inc.	Bethlehem, PA	Pennsylvania
Five Dollars a Day, LLC	San Francisco, CA	Delaware
Flat Rock Funding LLC	Charlotte, NC	Delaware
Fleet Capital International, Inc.	Providence, RI	United States of America
Fleet Capital Trust II	Boston, MA	Delaware

Fleet Capital Trust IX	Boston, MA	Delaware
Fleet Capital Trust V	Boston, MA	Delaware
Fleet Capital Trust VII	Boston, MA	Delaware
Fleet Capital Trust VIII	Boston, MA	Delaware
Fleet Center Associates	Providence, RI	Rhode Island
Fleet Commercial Loan Funding LLC	Boston, MA	Delaware
Fleet Commercial Loan Master LLC	Boston, MA	Delaware
Fleet Community Development Corporation	Providence, RI	Rhode Island
Fleet Credit Card Holdings, Inc.	Providence, RI	Delaware
Fleet Credit Card Services L.P.	Providence, RI	Rhode Island
Fleet Development Ventures L.L.C.	Boston, MA	Massachusetts
Fleet Equity Partners V, L.P.	Providence, RI	Delaware
Fleet Equity Partners VI, L.P.	Providence, RI	Delaware
Fleet Equity Partners VII, L.P.	Providence, RI	Delaware
Fleet Finance, Inc.	Providence, RI	Delaware
Fleet Financial Corporation	Providence, RI	Rhode Island
Fleet Financial Pennsylvania Corp.	Bala Cynwyd, PA	Pennsylvania
Fleet Fund Investors, LLC	Providence, RI	Delaware
Fleet Growth Resources II, Inc.	Providence, RI	Delaware
Fleet Growth Resources III, Inc.	Providence, RI	Rhode Island
Fleet Growth Resources IV, Inc.	Providence, RI	Rhode Island
Fleet Growth Resources, Inc.	Charlotte, NC	Delaware
Fleet Historic Associates	Providence, RI	Rhode Island
Fleet Home Equity Loan Trust 2001-1	Wilmington, DE	Delaware
Fleet Home Equity Loan, LLC	Boston, MA	Delaware
Fleet Insurance Agency (NJ), Inc.	Clinton, NJ	New Jersey
Fleet Insurance Agency Corp.-Connecticut	Chester, CT	Connecticut
Fleet Insurance Agency Corp.-New York	Castleton on Hudson, NY	New York
Fleet Insurance Agency Corporation	Boston, MA	Massachusetts
Fleet Insurance Company	Horsham, PA	Arizona
Fleet International Advisors S.A.	Montevideo, Uruguay	Uruguay
Fleet Land Company	Providence, RI	Rhode Island
Fleet Life Insurance Company	Horsham, PA	Arizona
Fleet NJ Community Development Corp.	Hartford, CT	New Jersey
Fleet Overseas Asset Management, Inc.	Boston, MA	Delaware
Fleet Pennsylvania Services Inc.	Scranton, PA	Delaware
Fleet Property Company	Providence, RI	Rhode Island
Fleet Retail Group, LLC	Boston, MA	Delaware
Fleet Venture Partners I	Providence, RI	Delaware
Fleet Venture Partners III	Providence, RI	Delaware
Fleet Venture Resources, Inc.	Providence, RI	Rhode Island
FleetBoston Co-Investment Partners (2000) LP	Boston, MA	Delaware
FleetBoston Co-Investment Partners (2001) LP	Boston, MA	Delaware
Forest SPC LLC	Charlotte, NC	Delaware
Foxwood (FP) Limited	London, U.K.	Cayman Islands
Framework, Inc.	Washington, DC	Delaware
FRB Acceptance LLC	San Francisco, CA	Delaware
FSC Corp.	Boston, MA	Massachusetts
Fugu Credit Limited	London, U.K.	United Kingdom
Full Court Tenant, LLC	New York, NY	New York
Fund Asset Management, L.P.	New York, NY	Delaware
Fund Five Financial, Inc.	San Francisco, CA	California
Fundo de Investimento em Direito Creditorio Nao Padronizado Tratex Precatorios II	Sao Paulo, Brazil	Brazil
Fundo de Investimento em Direitos Creditorios Nao Padronizados Tratex Precatorio III	Sao Paulo, Brazil	Brazil

Fundo de Investimento em Direito Creditorio PCG Brasil Multi Carteira	Sao Paulo, Brazil	Brazil
Fundo de Investimento Financeiro Multimercado Agata	Sao Paulo, Brazil	Brazil
Fundo de Investimento Financeiro Multimercado Diamond	Sao Paulo, Brazil	Brazil
Fundo de Investimento Financeiro Multimercado Iceberg	Sao Paulo, Brazil	Brazil
Fundo de Investimento Financeiro Multimercado Verona	Sao Paulo, Brazil	Brazil
Future Check LLC	Charlotte, NC	Delaware
Galante S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
GALCO B.V.	Amsterdam, The Netherlands	Netherlands
Galway Holdings Trust	Dublin, Ireland	Ireland
Garden Property LLC	Pennington, NJ	Delaware
Gatwick LLC	Charlotte, NC	Delaware
GBP Funding 2007-A Limited	London, U.K.	Cayman Islands
GEARS Holding LLC 2005-A	Charlotte, NC	Delaware
GEM 21 s.r.l.	Milan, Italy	Italy
General Fidelity Insurance Company	Columbia, SC	South Carolina
General Fidelity Life Insurance Company	Columbia, SC	South Carolina
Germantown-Seneca Joint Venture	Baltimore, MD	Maryland
Germany Telecommunications 1 S.a.r.L	Luxembourg, Luxembourg	Luxembourg
Gestion Santander, S.A. de C.V., Sociedad Operadora de Sociedades de Inversion	Mexico City, Mexico	Mexico
GHL Mortgage Originations Limited	Dartford, United Kingdom	England
GHL Mortgage Services Limited	Dartford, United Kingdom	England
GHL Payment Transmission Limited	Dartford, United Kingdom	United Kingdom
GHL Services Limited	Dartford, United Kingdom	United Kingdom
GHL Technology Limited Partnership	Dartford, United Kingdom	England
Giants ABS Co., Ltd.	Seoul, Korea	Korea
GK Ad astra	Tokyo, Japan	Japan
GK Brown Chip Properties	Tokyo, Japan	Japan
GK Carpe Diem	Tokyo, Japan	Japan
GK Nagareyama	Tokyo, Japan	Japan
GK Per Aspera	Tokyo, Japan	Japan
Gleneagles Trading LLC	Charlotte, NC	Delaware
Glenwood Investments Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Global Home Loans Limited	Dartford, United Kingdom	England
Global Principal Finance Company, LLC	New York, NY	Delaware
Global Structured Finance & Investments LLC	New York, NY	Delaware
GlobaLoans International Technology Limited Partnership	Dartford, United Kingdom	England
GlobaLoans JV Limited Partnership	Dartford, United Kingdom	England
GMI Investments, Inc.	New York, NY	Delaware
GMI Strategic Investments, LLC	New York, NY	Delaware
Gold Magnet (BVI) Limited	Tortola, British Virgin Islands	Virgin Islands
Gold Park Creek LLC	Charlotte, NC	Delaware
Goldbourne Park Limited	Dublin, Ireland	Jersey
Golden Gate Investments S.A.	Bogota, Colombia	Columbia
Golden Peak Investments LLC	Charlotte, NC	Delaware
Good Neighbor Labuan Holdings Ltd.	Labuan, Malaysia	Malaysia
Government Securities Delaware, LLC	Princeton, NJ	Delaware
GPC Securities, Inc.	Atlanta, GA	Georgia
GPFC Ireland Limited	Dublin, Ireland	Ireland
GPI Investment Holdings (Belgium) BVBA	Brussels, Belgium	Belgium
Green Equity Inc.	New York, NY	New Jersey
Greenwood Apartments, LLC	Tampa, FL	Florida
Groom Lake, LLC	Charlotte, NC	Delaware

Grupo Financiero Bank of America, S.A. de C.V.	Mexico City, Mexico	Mexico
Grupo Financiero Santander, S.A. de C.V.	Mexico City, Mexico	Mexico
GTVBI, Inc.	Port Louis, Mauritius	Mauritius
Hachiko, LLC	San Francisco, CA	Delaware
Hampton Funding LLC	Charlotte, NC	Delaware
Hannibal Associates, L.P.	New York, NY	Delaware
Hannibal Properties Corp.	New York, NY	Delaware
Hanover Holdings Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Harbour Directors I Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Harbour Directors II Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Harbour Nominees Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Harbour Secretaries I Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Harbour Town Funding LLC	Charlotte, NC	Delaware
Harney Lane Limited	Dublin, Ireland	Ireland
Harper Farm M Corp.	Baltimore, MD	Maryland
HCL Acquisition LLC	Boston, MA	Massachusetts
HCL Developer LLC	Boston, MA	Massachusetts
HCL Manager LLC	Boston, MA	Massachusetts
HealthLogic Systems Corporation	Norcross, GA	Georgia
Heathrow LLC	Charlotte, NC	Delaware
Heathrow, Inc. II	Charlotte, NC	Delaware
Helios Funding LLC	Charlotte, NC	Delaware
Henry II, LLC	New York, NY	Delaware
Hercules Trading LLC	Charlotte, NC	Delaware
Herzog Commodities, Inc.	New York, NY	New York
Herzog, Heine, Geduld Global, Inc.	New York, NY	Delaware
Herzog, Heine, Geduld International, Inc.	New York, NY	Delaware
Herzog, Heine, Geduld, LLC	New York, NY	Delaware
Hever Hill Limited	London, U.K.	United Kingdom
High Grade Structured Credit CDO 2007-1	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Hilltop Energy Investment Corp. II	Grand Cayman, Cayman Islands	Cayman Islands
Hilltop Proprietary Investment, LLC	Houston, TX	Delaware
Historic Ellison, L.P.	Kansas City, MO	Missouri
HLTV Securitization Corporation	Calabasas, CA	Delaware
HNC Realty Company	Hartford, CT	Connecticut
Holding Services Ltd.	Grand Cayman, Cayman Islands	Cayman Islands
Home Equity USA, Inc.	Providence, RI	Rhode Island
Home Loan Services, Inc.	Pittsburgh, PA	Delaware
HomeFocus Tax Services, LLC	Richmond, VA	Virginia
Homestead Trading LLC	Charlotte, NC	Delaware
Hornby Lane Limited	Dublin, Ireland	Jersey
Hospitality & Leisure-Fondo comune di investimento immobiliare speculativo di tip chiuso	Milan, Italy	Italy
Howlan Park Limited	Dublin, Ireland	Ireland
HQ North Company Inc.	New York, NY	New York
IBK Holdings International Principal Investments, Ltd.	New York, NY	Cayman Islands
IBK Holdings Principal Investments, LLC	New York, NY	Delaware
IBK International Principal Investments, Ltd.	New York, NY	Cayman Islands
IFIA Insurance Services, Inc.	Greenville, DE	Delaware
IHR, LLC	San Francisco, CA	Delaware
InCapital Europe Limited	London, U.K.	United Kingdom
Incapital Holdings, LLC	Chicago, IL	Illinois
InCapital, LLC	Chicago, IL	Illinois
Independence One Life Insurance Company	Phoenix, AZ	Arizona
Indian Head Banks, Inc.	Manchester, NH	New Hampshire
Indopark (Cayman) Limited	Grand Cayman, Cayman Islands	Cayman Islands

Indopark Holdings Limited	Port Louis, Mauritius	Mauritius
Industrial Investment Corporation	Baltimore, MD	Rhode Island
Inmobiliaria de Lerma y Amazonas, S.A. de C.V.	Mexico City, Mexico	Mexico
Institucion Financiera Externa Merrill Lynch Bank Uruguay S.A.	Montevideo, Uruguay	Uruguay
Instituto Santander Serfin, A.C.	Mexico City, Mexico	Mexico
International Special Situations Holdings C.V.	George Town, Grand Cayman, Cayman Is.	Netherlands
Inversiones Merrill Lynch Chile II Limitada	Santiago, Chile	Chile
Inversiones Merrill Lynch Chile Limitada	Santiago, Chile	Chile
Investco LLC, Series 2003-1	Wilmington, DE	Delaware
Investment Fund Partners	Providence, RI	Delaware
Investments 2234 Chile Fondo de Inversion Privado I	Santiago, Chile	Chile
Investments 2234 Chile Fondo de Inversion Privado II	Santiago, Chile	Chile
Investments 2234 China Fund 1 B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund 11 B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund 12 B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund 13 B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund 14 B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund 15 B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund 16 B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund 17 B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund 18 B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund I B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund II B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund III B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund IV B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund IX B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund V B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund VI B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund VII B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund VIII B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Fund X B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Overseas Holdings B.V.	Amsterdam, The Netherlands	Netherlands
Investments 2234 Philippines Fund I (SPV-AMC), Inc.	Manila, Philippines	Philippines
Investments 2234, LLC	Charlotte, NC	Delaware
Investments Dos Dos Tres Cuatro Chile Holdings S.A.	Santiago, Chile	Chile
Investor Bruckner, LLC	Boston, MA	Delaware
Investor Protection Insurance Company	Burlington, VT	Vermont
IQ Financial Products LLC	New York, NY	Delaware
IQ Investment Advisors LLC	New York, NY	Delaware
Ironwood (FP) Limited	London, U.K.	Cayman Islands
Isabella I, LLC	New York, NY	Delaware
Iskalo Electric Tower Master Tenant LLC	Williamsville, NY	New York
Island Funding, Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Ismael I, Inc.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
James I, LLC	New York, NY	Delaware
JCCA, Inc.	Wilton, CT	Delaware
Jin Sheng Asset Management Company Limited	Taipei, Taiwan	Taiwan
Jupiter Loan Funding LLC	Charlotte, NC	Delaware
Kaldi Funding LLC	Charlotte, NC	Delaware
Kauai Hotel, L.P.	Los Angeles, CA	Delaware
KB Home Mortgage, LLC	Plano, TX	Delaware
KECALP Inc.	New York, NY	Delaware
KECALP International Ltd.	New York, NY	Cayman Islands
Keowee Falls Funding LLC	Charlotte, NC	Delaware



KML Holdings Co., Ltd.	Labuan, Malaysia	Malaysia
KML II Holdings Co., Ltd.	Labuan, Malaysia	Malaysia
Korea Ranger Limited	Seoul, Korea	Korea
L.A. Funding LLC	Charlotte, NC	Delaware
Laguna Funding LLC	Charlotte, NC	Delaware
Lake Forest Holding Company	Baltimore, MD	Virginia
LandSafe Appraisal Services, Inc.	Plano, TX	California
LandSafe Credit, Inc.	Rosemead, CA	California
LandSafe Default, Inc.	Rosemead, CA	Pennsylvania
LandSafe Flood Determination, Inc.	Plano, TX	California
LandSafe Services of Alabama, Inc.	Montgomery, AL	Alabama
LandSafe Services, LLC	St. Louis, MO	Missouri
LandSafe Title of California, Inc.	Rosemead, CA	California
LandSafe Title of Florida, Inc.	Rosemead, CA	Florida
LandSafe Title of Texas, Inc.	Rosemead, CA	Texas
LandSafe Title of Washington, Inc.	Simi Valley, CA	Washington
LandSafe, Inc.	Plano, TX	Delaware
Laredo Park Holdings, Inc.	Charlotte, NC	Delaware
Laredo Partners	Charlotte, NC	Delaware
LaSalle Community Development Corporation	Chicago, IL	Illinois
LaSalle Funding LLC	Chicago, IL	Delaware
LaSalle Street Capital, Inc.	Chicago, IL	Delaware
LaSalle Trade Services Corporation	Chicago, IL	Illinois
LaSalle Trade Services Limited	Chicago, IL	Illinois
Lat-Am Bridge Holdco LLC	Hong Kong, PRC	Hong Kong, PRC
Latin America Real Estate Holdings, LLC	New York, NY	Delaware
LBC Limited	New York, NY	Delaware
Leaves, LLC	Nassau, Bahamas	Bahamas
Lexington Trails Holdings, LP	San Francisco, CA	Delaware
Leyden Bay B.V.	Dallas, TX	Texas
Limacon Park Limited	Amsterdam, The Netherlands	Netherlands
Lincoln Road Real Estate Partners, LLC	Dublin, Ireland	Ireland
Links at Eastwood LLC, The	Miami Beach, FL	Delaware
Linville Funding LLC	Charlotte, NC	North Carolina
Live Oak Apartments, LLC	Charlotte, NC	Delaware
Loans.co.uk Limited	Charlotte, NC	North Carolina
Lynx Associates, L.P.	Watford, Hertfordshire, U.K.	United Kingdom
Lynx Properties Corp.	New York, NY	Delaware
Magellan Bay Limited	New York, NY	Delaware
Main Place Funding, LLC	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Mainsearch Company Limited	New York, NY	Delaware
Majestic Acquisitions Limited	Chester, England	England
Malbec II, LLC	London, U.K.	England
Managed Account Advisors LLC	New York, NY	Delaware
Manele Bay II Limited	Jersey City, NJ	Delaware
Marlborough Sounds LLC	Amsterdam, The Netherlands	Jersey
Marlin House Holdings Limited	Charlotte, NC	Delaware
Mars 1, LLC	Watford, Hertfordshire, U.K.	United Kingdom
Marsico Management Holdings, L.L.C.	New York, NY	Delaware
Maryvale Urban Investments, Inc.	Charlotte, NC	Delaware
Mayfair Partners	Phoenix, AZ	Arizona
MBNA Canada Bank	Charlotte, NC	Delaware
MBNA Canada Properties Co.	Gloucester, Canada	Canada
MBNA Capital A	Gloucester, Canada	Canada
MBNA Capital B	Wilmington, DE	Delaware
	Wilmington, DE	Delaware

MBNA Capital C	Wilmington, DE	Delaware
MBNA Capital D	Wilmington, DE	Delaware
MBNA Capital E	Wilmington, DE	Delaware
MBNA Community Development Corporation	Wilmington, DE	Delaware
MBNA Direct Limited	Chester, England	England
MBNA Dublin Properties Limited	Dublin, Ireland	England
MBNA Europe Bank Limited	Chester, England	United Kingdom
MBNA Europe Finance Limited	Chester, England	Guernsey
MBNA Europe Funding, PLC	Chester, England	United Kingdom
MBNA Europe Holdings Limited	Chester, England	United Kingdom
MBNA Funding Company Limited	Chester, England	England & Wales
MBNA Global Services Limited	Chester, England	United Kingdom
MBNA Indian Services Private Limited	Bangalore, India	India
MBNA International Properties Limited	Chester, England	England
MBNA Ireland Limited	Carrick-on-Shannon, Ireland	Ireland
MBNA Luxembourg Holdings S.a.r.l.	Grand Duchy of Luxembourg, Luxembourg	Luxembourg
MBNA Marketing Systems, Inc.	Wilmington, DE	Delaware
MBNA Partnership Investments Limited	Chester, England	United Kingdom
MBNA Property Services Limited	Chester, England	England
MBNA R & L S.a.r.l.	Kirschberg, Luxembourg	Luxembourg
MBNA Receivables Limited	Chester, England	Jersey
MBNA Scotland LP	Edinburgh, Scotland	England & Wales
MBNA Technology, Inc.	Wilmington, DE	Delaware
Mecklenburg Park, Inc.	Charlotte, NC	Delaware
Mediterranean Funding LLC	Charlotte, NC	Delaware
Mei Tou (Tianjin) Property Holdings Limited	People's Republic of China	China
Mei Tou Holdings Limited	Port Louis, Mauritius	Mauritius
Mei Ya (Tianjin) Property Holdings Limited	People's Republic of China	China
Menkent Sarl	Luxembourg, Luxembourg	Luxembourg
Mercury 1, LLC	New York, NY	Delaware
Meritplan Insurance Company	Irvine, CA	California
Merlot III, LLC	New York, NY	Delaware
Merrill Diamond Funds	Grand Duchy of Luxembourg, Luxembourg	Luxembourg
Merrill Invest (Australia) Limited	Sydney, Australia	Australia
Merrill Lynch Alternative Investments LLC	New York, NY	Delaware
Merrill Lynch Aquisicoes e Participacoes Brasil Ltda	Sao Paulo, Brazil	Brazil
Merrill Lynch Argentina S.A.	Capital Federal, Argentina	Argentina
Merrill Lynch Asia Investments Limited	Port Louis, Mauritius	Mauritius
Merrill Lynch (Asia Pacific) Limited	Hong Kong, PRC	Hong Kong, PRC
Merrill Lynch Asian Real Estate Fund Manager Pte. Ltd.	Singapore, Singapore	Singapore
Merrill Lynch Asian Real Estate Opportunity Fund II, L.P.	Grand Cayman, Cayman Islands	Cayman Islands
Merrill Lynch Asian Real Estate Opportunity Fund II Pte. Ltd.	Singapore, Singapore	Singapore
Merrill Lynch (Australasia) Pty Ltd.	Sydney, Australia	Australia
Merrill Lynch (Australia) Funding (No. 1) Pty Limited	Melbourne, Victoria, Australia	Australia
Merrill Lynch (Australia) Futures Limited	Sydney, Australia	Australia
Merrill Lynch (Australia) Nominees Pty. Limited	Melbourne, Victoria, Australia	Australia
Merrill Lynch (Australia) Pty Ltd	Sydney, Australia	Australia
Merrill Lynch (B.V.I.) Limited	Tortola, British Virgin Islands	Virgin Islands
Merrill Lynch Bank (Suisse) S.A.	Geneva, Switzerland	Switzerland
Merrill Lynch Bank and Trust Company (Cayman) Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Merrill Lynch Benchmark Holdings LLC	New York, NY	Delaware
Merrill Lynch Benefits Ltd.	Toronto, Canada	Canada
Merrill Lynch (Bermuda) Services Limited	Hamilton, Bermuda	Bermuda

Merrill Lynch (Camberley) Limited	London, U.K.	England
Merrill Lynch Canada Credit Inc.	Toronto, Ontario, Canada	Canada
Merrill Lynch Canada Finance Company	Toronto, Ontario, Canada	Canada
Merrill Lynch Canada Holdings Company	Toronto, Ontario, Canada	Canada
Merrill Lynch Canada Inc.	Toronto, Ontario, Canada	Canada
Merrill Lynch Canada Services Inc.	Toronto, Ontario, Canada	Canada
Merrill Lynch Capital Canada Inc.	Toronto, Ontario, Canada	Canada
Merrill Lynch Capital Corporation	New York, NY	Delaware
Merrill Lynch Capital Markets AG	Zurich, Switzerland	Switzerland
Merrill Lynch Capital Markets Espana, S.A., S.V.	Madrid, Spain	Spain
Merrill Lynch Capital Markets (France) SAS	Paris, France	France
Merrill Lynch Capital Markets (Taiwan) Limited	Taipei, Taiwan	Taiwan
Merrill Lynch Capital Partners, Inc.	New York, NY	Delaware
Merrill Lynch Capital Services, Inc.	New York, NY	Delaware
Merrill Lynch Chile Holdings 1 LLC	New York, NY	Delaware
Merrill Lynch Chile Holdings 2 LLC	New York, NY	Delaware
Merrill Lynch Chile S.A.	Santiago, Chile	Chile
Merrill Lynch CICG, L.P.	New York, NY	Delaware
Merrill Lynch CIS Limited	London, U.K.	England
Merrill Lynch & Co., Canada Ltd.	Toronto, Canada	Canada
Merrill Lynch & Co., Inc.	Charlotte, NC	Delaware
Merrill Lynch Colombia Ltda.	Bogota, Colombia	Colombia
Merrill Lynch Commercial Finance Corp.	New York, NY	Delaware
Merrill Lynch Commodities (Europe) Holdings Limited	London, U.K.	England
Merrill Lynch Commodities (Europe) Limited	London, U.K.	England
Merrill Lynch Commodities (Europe) Trading Limited	London, U.K.	England
Merrill Lynch Commodities Canada, ULC	Toronto, Ontario, Canada	Canada
Merrill Lynch Commodities GmbH	London, U.K.	Germany
Merrill Lynch Commodities Ltd Belgrade	Belgrade, Serbia	Serbia and Montenegro
Merrill Lynch Commodities Luxembourg S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
Merrill Lynch Commodities S.r.l.	Bucharest, Romania	Romania
Merrill Lynch Commodities, Inc.	Houston, TX	Delaware
Merrill Lynch Commodity Financing Inc.	New York, NY	Delaware
Merrill Lynch Commodity Partners, L.P.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Merrill Lynch Community Development Company, LLC	New York, NY	New Jersey
Merrill Lynch Consulting Services (Beijing) Company Limited	Beijing, People's Republic of China	China
Merrill Lynch Corporate (New Zealand) Limited	Geneva, Switzerland	New Zealand
Merrill Lynch Corporate Services Limited	London, U.K.	England
Merrill Lynch Corredores de Bolsa S.A.	Santiago, Chile	Chile
Merrill Lynch Credit Corporation	Jacksonville, FL	Delaware
Merrill Lynch Credit Products, LLC	New York, NY	Delaware
Merrill Lynch Credit Reinsurance Limited	Hamilton, Bermuda	Bermuda
Merrill Lynch Defeas HoldCo, LLC	New York, NY	Delaware
Merrill Lynch Depositor, Inc.	New York, NY	Delaware
Merrill Lynch Derivative Products AG	Zurich, Switzerland	Switzerland
Merrill Lynch Diversified Investments, LLC	New York, NY	Delaware
Merrill Lynch Equities (Australia) Limited	Sydney, Australia	Australia
Merrill Lynch Equities Limited	London, U.K.	England
Merrill Lynch Equity S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
Merrill Lynch Espanola Agencia de Valores S.A.	Madrid, Spain	Spain
Merrill Lynch Europe Funding	London, U.K.	England
Merrill Lynch Europe Intermediate Holdings	London, U.K.	England
Merrill Lynch Europe Liquidity Company Limited	London, U.K.	England
Merrill Lynch Europe Limited	London, U.K.	England

Merrill Lynch Europe Ltd.	New York, NY	Cayman Islands
Merrill Lynch Europe S.A.	New York, NY	Panama
Merrill Lynch European Asset Holdings Inc.	New York, NY	Delaware
Merrill Lynch Far East Limited	Hong Kong, PRC	Hong Kong, PRC
Merrill Lynch Fiduciary Services, Inc.	Pennington, NJ	New York
Merrill Lynch Finance (Australia) Pty Limited	Sydney, Australia	Australia
Merrill Lynch Financial Assets Inc.	Toronto, Ontario, Canada	Canada
Merrill Lynch Financial Markets, Inc.	New York, NY	Delaware
Merrill Lynch Financial Services Limited	Dublin, Ireland	Ireland
Merrill Lynch France SAS	Paris, France	France
Merrill Lynch Fund Investors Inc.	New York, NY	Delaware
Merrill Lynch Funding Corporation	New York, NY	California
Merrill Lynch Futures (Hong Kong) Limited	Hong Kong, PRC	Hong Kong, PRC
Merrill Lynch Futures Asia Limited	Hong Kong, PRC	Taiwan
Merrill Lynch GENCO II, LLC	New York, NY	Delaware
Merrill Lynch GENCO, LLC	New York, NY	Delaware
Merrill Lynch Gilts Holdings Limited	London, U.K.	England
Merrill Lynch Gilts Investments Limited	London, U.K.	England
Merrill Lynch Gilts (Nominees) Limited	London, U.K.	England
Merrill Lynch Global Asset Management Limited	London, U.K.	England
Merrill Lynch Global Capital, L.L.C.	New York, NY	Delaware
Merrill Lynch Global Emerging Markets Partners II, LLC	New York, NY	Delaware
Merrill Lynch Global Emerging Markets Partners, L.P.	New York, NY	Delaware
Merrill Lynch Global Emerging Markets Partners, LLC	New York, NY	Delaware
Merrill Lynch Global Private Equity (Asia) Ltd.	Hong Kong, PRC	Hong Kong, PRC
Merrill Lynch Global Private Equity (Australia) Pty Limited	Sydney, Australia	Australia
Merrill Lynch Global Private Equity, Inc.	New York, NY	Delaware
Merrill Lynch Global Services Pte. Ltd.	Singapore, Singapore	Singapore
Merrill Lynch Global (Taiwan) Ltd.	Taipei, Taiwan	Taiwan
Merrill Lynch Government Securities Inc.	New York, NY	Delaware
Merrill Lynch Government Securities of Puerto Rico, Inc.	New York, NY	Puerto Rico
Merrill Lynch GP Inc.	New York, NY	Delaware
Merrill Lynch Group Financing, LLC	New York, NY	Delaware
Merrill Lynch Group Holdings I, L.L.C.	New York, NY	Delaware
Merrill Lynch Group Holdings II, L.L.C.	New York, NY	Delaware
Merrill Lynch Group Holdings III, L.L.C.	New York, NY	Delaware
Merrill Lynch Group Holdings IV, L.L.C.	New York, NY	Delaware
Merrill Lynch Group Holdings Limited	Dublin, Ireland	Ireland
Merrill Lynch Group, Inc.	Charlotte, NC	Delaware
Merrill Lynch HK Services Limited	Hong Kong, PRC	Hong Kong, PRC
Merrill Lynch Holdings Latin America 1, LLC	New York, NY	Delaware
Merrill Lynch Holdings Latin America 2, LLC	New York, NY	Delaware
Merrill Lynch Holdings Latin America 3, LLC	New York, NY	Delaware
Merrill Lynch Holdings Latin America 4, LLC	New York, NY	Delaware
Merrill Lynch Holdings Latin America 5, LLC	New York, NY	Delaware
Merrill Lynch Holdings Latin America, Inc.	New York, NY	Cayman Islands
Merrill Lynch Holdings Limited	New York, NY	England
Merrill Lynch Holdings (Mauritius)	Port Louis, Mauritius	Mauritius
Merrill Lynch Hopewell LLC	Pennington, NJ	Delaware
Merrill Lynch, Hubbard Inc.	New York, NY	Delaware
Merrill Lynch (India) Technology Services Private Limited	Mumbai, India	India
Merrill Lynch Insurance Group, Inc.	Pennington, NJ	Delaware
Merrill Lynch Insurance Group Services, Inc.	Jacksonville, FL	Delaware
Merrill Lynch International (Australia) Ltd	Sydney, Australia	Australia

Merrill Lynch International	London, U.K.	England
Merrill Lynch International Bank Limited	Dublin, Ireland	Ireland
Merrill Lynch International Capital Management (Guernsey) II Limited	Guernsey, Channel Islands	Guernsey
Merrill Lynch International Capital Management (Guernsey) Limited	Guernsey, Channel Islands	Guernsey
Merrill Lynch International & Co. C.V.	Curacao, Netherlands Antilles	Netherlands Antilles
Merrill Lynch International Finance (Cayman) Ltd.	Grand Cayman, Cayman Islands	Cayman Islands
Merrill Lynch International Finance, Inc.	New York, NY	New York
Merrill Lynch International Holdings Inc.	New York, NY	Delaware
Merrill Lynch International Incorporated	New York, NY	Delaware
Merrill Lynch International Management Limited	Hamilton, Bermuda	Bermuda
Merrill Lynch International Services Limited	Toronto, Ontario, Canada	Canada
Merrill Lynch Invest SAS	Paris, France	France
Merrill Lynch Investment Holdings (Mauritius) Limited	Port Louis, Mauritius	Mauritius
Merrill Lynch Investment Managers (Finance) Limited	London, U.K.	England
Merrill Lynch Investment Managers Group Services Limited	London, U.K.	England
Merrill Lynch Investment Managers Holdings B.V.	Amsterdam, The Netherlands	Netherlands
Merrill Lynch Investment Managers, L.P.	New York, NY	Delaware
Merrill Lynch Islands Limited	Grand Cayman, Cayman Islands	Cayman Islands
Merrill Lynch Israel Ltd.	Luxembourg, Luxembourg	Israel
Merrill Lynch Japan Finance Co., Ltd.	Tokyo, Japan	Japan
Merrill Lynch Japan Securities Co., Ltd.	Tokyo, Japan	Japan
Merrill Lynch (Jersey) Holdings Limited	St. Helier, Jersey, Channel Islands	Jersey
Merrill Lynch JPND, Inc.	New York, NY	Delaware
Merrill Lynch KECALP International, L.P. 1997	New York, NY	Cayman Islands
Merrill Lynch KECALP International, L.P. 1999	New York, NY	Cayman Islands
Merrill Lynch KECALP L.P. 1997	New York, NY	Delaware
Merrill Lynch KECALP L.P. 1999	New York, NY	Delaware
Merrill Lynch, Kingdom of Saudi Arabia Company	Kingdom of Saudi Arabia	Saudi Arabia
Merrill Lynch (KL) Sdn. Bhd.	Penang, Malaysia	Malaysia
Merrill Lynch L.P. Holdings Inc.	New York, NY	Delaware
Merrill Lynch Labuan Holdings Limited	Labuan, Malaysia	Malaysia
Merrill Lynch Life Agency	Pennington, NJ	Oklahoma
Merrill Lynch Life Agency Inc. (Montana)	Pennington, NJ	Montana
Merrill Lynch Life Agency Inc. (Oklahoma)	Pennington, NJ	Oklahoma
Merrill Lynch Life Agency Inc. (Puerto Rico)	Pennington, NJ	Puerto Rico
Merrill Lynch Life Agency Inc. (Virgin Islands)	Pennington, NJ	Virgin Islands
Merrill Lynch Life Agency Inc. (Washington)	Pennington, NJ	Washington
Merrill Lynch Liquidity Portfolio, L.P.	Edinburgh, Scotland	Scotland
Merrill Lynch LLC	Moscow, Russia	Russia
Merrill Lynch Luxembourg Capital Funding SARL	Luxembourg, Luxembourg	Luxembourg
Merrill Lynch Luxembourg Finance S.A.	Luxembourg, Luxembourg	Luxembourg
Merrill Lynch Luxembourg Holdings S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
Merrill Lynch Luxembourg Investments S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
Merrill Lynch (Luxembourg) S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
Merrill Lynch Management GmbH	Frankfurt, Germany	Germany
Merrill Lynch Markets (Australia) Pty. Limited	Sydney, Australia	Australia
Merrill Lynch (Mauritius) Investments Limited	Port Louis, Mauritius	Mauritius
Merrill Lynch MBP Inc.	New York, NY	Delaware
Merrill Lynch Menkul Degerler A.S.	Istanbul, Turkey	Turkey
Merrill Lynch Mexico Holdings 1, LLC	New York, NY	Delaware
Merrill Lynch Mexico Holdings 2, LLC	New York, NY	Delaware
Merrill Lynch Mexico, S.A. de C.V., Casa de Bolsa	Mexico City, Mexico	Mexico
Merrill Lynch Middle East Holding Company	London, U.K.	Delaware
Merrill Lynch Middle East Holding I, L.L.C.	London, U.K.	Delaware

Merrill Lynch Middle East Holdings II, L.L.C.	London, U.K.	Delaware
Merrill Lynch Middle East Holdings III, L.L.C.	London, U.K.	Delaware
Merrill Lynch Middle East Holdings IV, L.L.C.	London, U.K.	Delaware
Merrill Lynch Money Markets Inc.	New York, NY	Delaware
Merrill Lynch (Montevideo) S.A.	Montevideo, Uruguay	Uruguay
Merrill Lynch Mortgage and Investment Corporation	Pennington, NJ	Delaware
Merrill Lynch Mortgage Capital Inc.	New York, NY	Delaware
Merrill Lynch Mortgage Investors, Inc.	New York, NY	Delaware
Merrill Lynch Mortgage Lending, Inc.	New York, NY	Delaware
Merrill Lynch Mortgage Services Corporation	New York, NY	Delaware
Merrill Lynch Municipal ABS, Inc.	New York, NY	Delaware
Merrill Lynch N.V.	Amsterdam, The Netherlands	Netherlands
Merrill Lynch NMTC Corp.	New York, NY	Delaware
Merrill Lynch Nominees (Hong Kong) Limited	Hong Kong, PRC	Hong Kong, PRC
Merrill Lynch Nominees Limited	London, U.K.	England
Merrill Lynch OCRE General Ltd.	St. Helier, Jersey, Channel Islands	Jersey
Merrill Lynch OCRE Holdings Ltd.	St. Helier, Jersey, Channel Islands	Jersey
Merrill Lynch OCRE Jersey Ltd.	St. Helier, Jersey, Channel Islands	Jersey
Merrill Lynch Options/Futures Management Service Corporation	New York, NY	Delaware
Merrill Lynch Participacoes, Financas e Servicos Ltda	Sao Paulo, Brazil	Brazil
Merrill Lynch Partnership Holdings, LLC	New York, NY	Delaware
Merrill Lynch PCG, Inc.	New York, NY	Delaware
Merrill Lynch, Pierce, Fenner & Smith (Brokers & Dealers)	London, U.K.	England
Merrill Lynch, Pierce, Fenner & Smith (Hellas) E.P.E.	London, U.K.	Greece
Merrill Lynch, Pierce, Fenner & Smith (Middle East) S.A.L.	Beirut, Lebanon	Lebanon
Merrill Lynch, Pierce, Fenner & Smith Belge S.A.	Brussels, Belgium	Belgium
Merrill Lynch, Pierce, Fenner & Smith de Argentina Sociedad Anonima, Financiera, Mobiliaria y de Mandatos	Capital Federal, Argentina	Argentina
Merrill Lynch, Pierce, Fenner & Smith Incorporated	New York, NY	Delaware
Merrill Lynch, Pierce, Fenner & Smith Limited	London, U.K.	England
Merrill Lynch, Pierce, Fenner & Smith SAS	Paris, France	France
Merrill Lynch PNG LNG Corp	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Merrill Lynch Polska Sp. z o.o.	Warsaw, Poland	Poland
Merrill Lynch Portfolio Management Inc.	New York, NY	Delaware
Merrill Lynch Portfolio Managers (Channel Islands) Limited	St. Helier, Jersey, Channel Islands	Jersey
Merrill Lynch Portfolio Managers Limited	London, U.K.	England
Merrill Lynch Princeton Incorporated	New York, NY	Delaware
Merrill Lynch Principal Finance LLC	New York, NY	Delaware
Merrill Lynch Principal Investments Co., Ltd.	Tokyo, Japan	Japan
Merrill Lynch Private (Australia) Limited	Melbourne, Victoria, Australia	Australia
Merrill Lynch Private Capital Inc.	New York, NY	Delaware
Merrill Lynch Professional Clearing Corp.	New York, NY	Delaware
Merrill Lynch Properties Korea L.L.C.	Seoul, Korea	Korea
Merrill Lynch Purchase Price Investment LLC	New York, NY	Delaware
Merrill Lynch Real Estate II Incorporated	New York, NY	Delaware
Merrill Lynch Reinsurance Solutions LTD	Hamilton, Bermuda	Bermuda
Merrill Lynch Representacoes Ltda	Sao Paulo, Brazil	Brazil
Merrill Lynch S.A.	Luxembourg, Luxembourg	Luxembourg
Merrill Lynch S.A. Corretora de Titulos e Valores Mobiliarios	Sao Paulo, Brazil	Brazil
Merrill Lynch S.A.M.	Monte Carlo	Monaco
Merrill Lynch Scotland Finance II Limited Partnership	Edinburgh, Scotland	Scotland
Merrill Lynch Scotland Finance III Limited Partnership	Edinburgh, Scotland	Scotland

Merrill Lynch Scotland Finance Limited Partnership	Edinburgh, Scotland	Scotland
Merrill Lynch Securities (Taiwan) Ltd.	Taipei, Taiwan	Taiwan
Merrill Lynch Securities (Thailand) Limited	Bangkok, Thailand	Thailand
Merrill Lynch Settlement Services, Inc.	Jacksonville, FL	Florida
Merrill Lynch SIG Administradora e Gestora de Recursos Ltda.	Sao Paulo, Brazil	Brazil
Merrill Lynch Singapore Commodities Pte. Ltd.	Singapore, Singapore	Singapore
Merrill Lynch (Singapore) Pte Ltd.	Singapore, Singapore	Singapore
Merrill Lynch South Africa (Proprietary) Limited	Gauteng, South Africa	South Africa
Merrill Lynch Specialty Finance LLC	New York, NY	Delaware
Merrill Lynch Srl	Rome, Italy	
Merrill Lynch SSG S.A.R.L.	Luxembourg, Luxembourg	Luxembourg
Merrill Lynch SSG, L.P.	New York, NY	Delaware
Merrill Lynch Strategic Investment Advisors Inc.	New York, NY	Delaware
Merrill Lynch Strategic Investments Holdings, LLC-1	New York, NY	Delaware
Merrill Lynch Strategic Investments, LLC-2	New York, NY	Delaware
Merrill Lynch Structured Investments, LLC	New York, NY	Delaware
Merrill Lynch Television, Inc.	New York, NY	Delaware
Merrill Lynch Trust Services S.A.	Geneva, Switzerland	Switzerland
Merrill Lynch UK Finance	London, U.K.	England
Merrill Lynch (UK) Healthcare Trustee Limited	London, U.K.	England
Merrill Lynch UK Holdings	London, U.K.	England
Merrill Lynch (UK) Pension Plan Trustees Limited	London, U.K.	England
Merrill Lynch Utah Investment Corporation	Salt Lake City, UT	Utah
Merrill Lynch Valores S.A. Sociedad de Bolsa	Capital Federal, Argentina	Argentina
Merrill Lynch Venture Capital Inc.	New York, NY	Delaware
Merrill Lynch Ventures Administrators, LLC	New York, NY	Delaware
Merrill Lynch Ventures, LLC	New York, NY	Delaware
Merrill Lynch Ventures L.P. 2001	New York, NY	Delaware
Merrill Lynch Yatirim Bank A.S.	Istanbul, Turkey	Turkey
Merrill Lynch/WFC/L, Inc.	New York, NY	New York
MerryPlace Development, LLC	Charlotte, NC	Florida
MerryPlace, LLC	Charlotte, NC	Florida
Mership Nominees Limited	London, U.K.	England
MESBIC Ventures, Inc.	Richardson, TX	Texas
Metro Plaza, Inc.	Boston, MA	Massachusetts
Mid-Atlantic Gotham Golf, Inc.	New York, NY	Delaware
Middletown Finance, LLC	Charlotte, NC	Delaware
Midland Doherty Realty Inc.	Toronto, Ontario, Canada	Arizona
Midland Walwyn Capital Corporation	Toronto, Ontario, Canada	Delaware
Midland Walwyn Inc.	Toronto, Ontario, Canada	Canada
Midway Road Funding Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Midway Trust	Wilmington, DE	Delaware
Midwest Affordable Housing 1997-1, L.L.C.	Charlotte, NC	Missouri
Midwest Mezzanine Fund III, L.P.	Chicago, IL	Delaware
Mier-Day Properties, LLC	San Francisco, CA	Delaware
Milestone (Cayman) Limited	Grand Cayman, Cayman Islands	Cayman Islands
Mineral Rapids Investments LP	Charlotte, NC	Nevada
Mitchell Funding LLC	Charlotte, NC	Delaware
Mitsubishi UFJ Merrill Lynch PB Securities Co., Ltd.	Tokyo, Japan	Japan
MJB Co. Ltd.	Hong Kong, PRC	Thailand
ML 1633 Broadway LLC	New York, NY	Delaware
ML 2003 Alpha LLC	New York, NY	Delaware
ML 2003 Beta LLC	New York, NY	Delaware
ML 35 LLC	New York, NY	Delaware

ML 300 Corporation	Pennington, NJ	Delaware
ML 300 Spear LLC	New York, NY	Delaware
ML Aberdare	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Aeolus Co-Invest Ltd.	New York, NY	Cayman Islands
ML Agriculture Beta and Positive Alpha Fund-SPGSCI Agriculture TR Benchmark	Paris, France	France
ML Andromeda (Cayman)	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Asian R.E. Fund (ERISA), L.P.	New York, NY	Cayman Islands
ML Asian R.E. Fund (Germany) L.P.	New York, NY	England
ML Asian R.E. Fund II (ML), L.P.	New York, NY	England
ML Asian R.E. Fund (ML), L.P.	New York, NY	England
ML Asian R.E. Fund (Scotland) GP, Limited	New York, NY	Scotland
ML Asian R.E. Fund C.I.M.P., L.P.	New York, NY	Delaware
ML Asian R.E. Fund C.I.P., L.P.	New York, NY	Delaware
ML Asian R.E. Fund C.I.R.P., L.P.	New York, NY	Delaware
ML Asian R.E. Fund GP, L.L.C.	New York, NY	Delaware
ML Asian R.E. Fund II GP, L.L.C.	New York, NY	Delaware
ML Asian R.E. Fund GP, L.P.	New York, NY	Cayman Islands
ML Asian R.E. Fund II GP, L.P.	New York, NY	Cayman Islands
ML Asian R.E. Fund ML C.I., L.P.	New York, NY	England
ML Asset Backed Corporation	New York, NY	Delaware
ML Asset Holdings LLC	Wilmington, DE	Delaware
ML Balkhouse Properties Corp.	New York, NY	Tennessee
ML Banderia Cayman BRL Inc.	New York, NY	Cayman Islands
ML Basil Trust	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML BCE Holdings, S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
ML BCV Two Hotels LLC	New York, NY	Delaware
ML Beech	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Bosphorus Holdings LLC	Wilmington, DE	Delaware
ML Bosphorus RE Holdings Jersey I Ltd.	St. Helier, Jersey, Channel Islands	Jersey
ML BREP Member LLC	New York, NY	Delaware
ML BREP MM LLC	New York, NY	Delaware
ML Bullseye PGP LLC	New York, NY	Delaware
ML Cable Holdings Limited	London, U.K.	England
ML Cable Investments 1 Limited	London, U.K.	England
ML Cable Investments 2 Limited	London, U.K.	England
ML Cable Investments 3 Limited	London, U.K.	England
ML CAM Jersey Limited	Pennington, NJ	Jersey
ML Canary (Cayman)	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Cardiff Holdings Limited	St. Helier, Jersey, Channel Islands	Jersey
ML Cardiff Jersey Limited	St. Helier, Jersey, Channel Islands	Jersey
ML Cayman 2003 Holding Corp.	New York, NY	Cayman Islands
ML Cayman 2003 Investor Corp.	New York, NY	Cayman Islands
ML Cayman Holdings Inc.	New York, NY	Delaware
ML Cayman Positions, Ltd.	New York, NY	Cayman Islands
ML Chestnut	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML City Center LLC	New York, NY	Delaware
ML Commodity Beta and Positive Alpha Fund-DJAIG TR Benchmark	Paris, France	France
ML Commodity Beta and Positive Alpha Fund-RICI TR Benchmark	Paris, France	France
ML Commodity Beta and Positive Alpha Fund-SPGSCI TR Benchmark	Paris, France	France
ML Compayne	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Cortlandt Realty Corporation	New York, NY	Delaware
ML Credit Investments Series 2008-1 Limited	St. Helier, Jersey, Channel Islands	Jersey



ML Credit Investments Series 2008-2 Limited	St. Helier, Jersey, Channel Islands	Jersey
ML Credit Trading (Jersey) Limited	St. Helier, Jersey, Channel Islands	Jersey
ML Credit Trading Mosel Limited	St. Helier, Jersey, Channel Islands	Jersey
ML Cruzeiro Cayman BRL Inc.	New York, NY	Cayman Islands
ML Dover Properties, Inc.	New York, NY	Delaware
ML EMEA Holdings II LLC	New York, NY	Delaware
ML EMEA Holdings LLC	New York, NY	Delaware
ML EMGF Mosel S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
ML Employees LBO Managers, Inc.	New York, NY	Delaware
ML Energy Fund Management, LLC	Houston, TX	Delaware
ML Energy Investment Corp.	Grand Cayman, Cayman Islands	Cayman Islands
ML Energy Investment Fund Upstream (PNG) Pty Ltd	Sydney, NSW, Australia	Australia
ML Energy Partners, LLC	Houston, TX	Delaware
ML Equity Holdings LLC	New York, NY	Delaware
ML Equity Solutions Jersey Limited	St. Helier, Jersey, Channel Islands	Jersey
ML European Asian R.E. Fund U.S. Investment Advisor, L.L.C.	New York, NY	Delaware
ML European R.E. Fund (ML), L.P.	New York, NY	England
ML European R.E. Fund (T.E.), L.P.	New York, NY	England
ML European R.E. Fund (U.S.T.), L.P.	New York, NY	Delaware
ML European R.E. Fund C.I.M.P., L.P.	New York, NY	Delaware
ML European R.E. Fund C.I.P., L.P.	New York, NY	Delaware
ML European R.E. Fund C.I.R.P., L.P.	New York, NY	Delaware
ML European R.E. Fund GP II, L.P.	New York, NY	Delaware
ML European R.E. Fund GP, L.L.C.	New York, NY	Delaware
ML European R.E. Fund GP, L.P.	New York, NY	Delaware
ML European R.E. Fund M.L.P., L.P.	New York, NY	Delaware
ML European R.E. Fund ML C.I., L.P.	New York, NY	England
ML European Real Estate Fund (German), L.P.	New York, NY	England
ML Film Entertainment International Inc.	New York, NY	Delaware
ML Florido Cayman MX Inc.	New York, NY	Cayman Islands
ML FPL Holdings, LLC	New York, NY	Delaware
ML Fund Administrators Inc.	New York, NY	Delaware
ML GBP Hold Co LLC	New York, NY	Delaware
ML GBP Investments, Inc.	New York, NY	Delaware
ML GCRE GP, L.L.C.	New York, NY	Delaware
ML GCRE IBK LLC	New York, NY	Delaware
ML GCRE LPH LLC	New York, NY	Delaware
ML Global Private Equity Fund, L.P.	New York, NY	Cayman Islands
ML Global Private Equity Partners, L.P.	New York, NY	Cayman Islands
ML Hannibal Properties Corp.	New York, NY	Delaware
ML Hayden Trust	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Hedge Fund Ventures	New York, NY	Cayman Islands
ML Hedge Fund Ventures II	New York, NY	Cayman Islands
ML Hillyer, LLC	New York, NY	Delaware
ML Houston GP, Inc.	New York, NY	Delaware
ML Houston Ltd.	New York, NY	Texas
ML Houston Mezz LLC	New York, NY	Delaware
ML IBK Positions, Inc.	New York, NY	Delaware
ML Infrastructure Holdings II Ltd.	New York, NY	Cayman Islands
ML Infrastructure Holdings LLC	New York, NY	Delaware
ML Infrastructure Holdings Ltd.	New York, NY	Cayman Islands
ML Infrastructure Holdings S.a.r.l.	New York, NY	Luxembourg
ML Insurance (IOM) Limited	Douglas, Isle of Man	Isle of Man
ML Invest Finance II, L.L.C.	New York, NY	Delaware

ML Invest Finance, L.L.C.	New York, NY	Delaware
ML Invest Holdings	London, U.K.	England
ML Invest, Inc.	New York, NY	Delaware
ML Invest Scotland Finance II Limited Partnership	Edinburgh, Scotland	Scotland
ML Invest Scotland Finance III Limited Partnership	Edinburgh, Scotland	Scotland
ML Invest Scotland Finance Limited Partnership	Edinburgh, Scotland	Scotland
ML Knight 2003 Holding Corp.	New York, NY	Cayman Islands
ML Knight 2003 Investor Corp.	New York, NY	Cayman Islands
ML Larch	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Lareh Asset Manager LLC	New York, NY	Delaware
ML Lareh Member LLC	New York, NY	Delaware
ML Lareh MM LLC	New York, NY	Delaware
ML LCI Asia L.P.	New York, NY	Cayman Islands
ML LCI Europe L.P.	New York, NY	England
ML Leasing Equipment Corp.	New York, NY	Delaware
ML Leasing Servicing, Inc.	New York, NY	Delaware
ML Life Agency Inc. (Texas)	Pennington, NJ	Texas
ML Liquidity Portfolio LLC	New York, NY	Delaware
ML MBF GP, Ltd.	New York, NY	Cayman Islands
ML MBS Management, LLC	New York, NY	Delaware
ML MBS Services Limited	London, U.K.	England
ML Media Management Inc.	New York, NY	Delaware
ML Mezzanine II, Inc.	New York, NY	Delaware
ML Mortgage Holdings Inc.	Pennington, NJ	Delaware
ML Mosel Funding USA LLC	New York, NY	Delaware
ML Mosel Holdings Gibraltar Ltd.	Gibraltar, Gibraltar	Gibraltar
ML Mosel Holdings Luxembourg S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
ML Newcastle (Gibraltar) Limited	Gibraltar, Gibraltar	Gibraltar
ML Newcastle Investments Limited	St. Helier, Jersey, Channel Islands	Jersey
ML Newcastle Issuer S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
ML Newcastle Luxembourg S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
ML Nuveen Co-Invest, Ltd.	New York, NY	Cayman Islands
ML Observatory Trust	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Onyx Properties Corp.	New York, NY	Delaware
ML Palm, LLC	New York, NY	Delaware
ML Petrie Parkman Co., Inc.	New York, NY	Delaware
ML Phoenix Inns LLC	New York, NY	Delaware
ML Phoenix Manager LLC	New York, NY	Delaware
ML Pine	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Plainsboro Limited Partnership	Pennington, NJ	New Jersey
ML Ponserv Inc.	New York, NY	Delaware
ML Pontiac Properties Corp.	New York, NY	Michigan
ML Pref LLC	New York, NY	Delaware
ML Pref Member LLC	New York, NY	Delaware
ML Priory	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Private Equity Offshore Ltd.	New York, NY	Cayman Islands
ML Private Finance LLC	New York, NY	Delaware
ML Ray Co-Investor GP Ltd.	New York, NY	Cayman Islands
ML Ray Investor GP Ltd.	New York, NY	Cayman Islands
ML Ray Investor, L.P.	New York, NY	Cayman Islands
ML Ray Investor S.a.r.l.	New York, NY	Luxembourg
ML Rowley	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Salinas Cayman MX Inc.	New York, NY	Cayman Islands
ML SB Girvin Plaza, LLC	New York, NY	Delaware

ML SB Lodge North Investors	New York, NY	Delaware
ML Spider	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML ST/PCV LLC	New York, NY	Delaware
ML Stonelake Asset Manager LLC	New York, NY	Delaware
ML Stonelake GP LLC	New York, NY	Delaware
ML Stonelake LP	New York, NY	Delaware
ML Tate Financing Co.	New York, NY	Delaware
ML Taurus, Inc.	New York, NY	Delaware
ML Terrano, LLC	New York, NY	Delaware
ML Tonalá Cayman MX Inc.	New York, NY	Cayman Islands
ML Tower Trust	George Town, Grand Cayman, Cayman Is.	Cayman Islands
ML Ubase Holdings Co., Ltd.	Labuan, East Malaysia	Malaysia
ML UK Capital Holdings	London, U.K.	England
ML UK Funding Limited	London, U.K.	England
ML UK Services Limited	London, U.K.	Cayman Islands
ML Umbrella FCP	Paris, France	France
ML USD MBS Management, LLC	New York, NY	Delaware
ML Veda Co-Invest, Ltd.	New York, NY	Cayman Islands
ML VI Hotel Co LLC	New York, NY	Virgin Islands
ML Viola, LLC	New York, NY	Delaware
ML Whitby (Gibraltar) Limited	Gibraltar, Gibraltar	Gibraltar
ML Whitby Investments Limited	St. Helier, Jersey, Channel Islands	Jersey
ML Whitby Issuer S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
ML Whitby Luxembourg S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
ML Windy City Investments Holdings, L.L.C.	New York, NY	Delaware
MLAE Nominees Pty Limited	Sydney, NSW, Australia	Australia
MLBC, Inc.	Chicago, IL	Delaware
MLBUSA Community Development Corp.	New York, NY	Delaware
MLBUSA Funding Corporation	Salt Lake City, UT	Delaware
MLCI Holdings, Inc.	Houston, TX	Delaware
MLDP Holdings, Inc.	New York, NY	Delaware
MLEIH Funding	London, U.K.	England & Wales
MLEQ Nominees Pty Limited	Sydney, NSW, Australia	Australia
MLFM SARL	Geneva, Switzerland	Switzerland
MLFS Hold Co A Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
MLFS Hold Co LLC	Wilmington, DE	Delaware
MLGP Urban Renewal LLC	Pennington, NJ	New Jersey
MLGPE A-RE LLC	New York, NY	Delaware
MLGPE Delaware LLC	New York, NY	Delaware
MLGPE Fund International II, L.P.	New York, NY	Cayman Islands
MLGPE Fund US Alternative, L.P.	New York, NY	Delaware
MLGPE Fund US II, L.P.	New York, NY	Delaware
MLGPE HK GP Limited	Hong Kong, PRC	Hong Kong
MLGPE International Capital Ltd.	New York, NY	Cayman Islands
MLGPE International Strategies Ltd.	New York, NY	Cayman Islands
MLGPE Ltd.	New York, NY	Cayman Islands
MLGPE Partners II, L.P.	New York, NY	Cayman Islands
MLGPE US Capital LLC	New York, NY	Delaware
MLGPE US Strategies LLC	New York, NY	Delaware
MLGPI Holdings B.V.	Amsterdam, The Netherlands	Netherlands
MLH Group Inc.	New York, NY	Delaware
MLH Merger Corporation	New York, NY	New York
MLHC, Inc.	New York, NY	Delaware
MLHM, Inc.	New York, NY	California

MLHQ, LLC	New York, NY	Delaware
MLHRE Incorporated	New York, NY	Delaware
mlib (historic)	London, U.K.	England
MLIM Capital Limited	London, U.K.	England
MLIM Investments Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
MLIS Limited	London, U.K.	England
MLMBCAV, Inc.	New York, NY	Delaware
MLMCI Ohio, Inc.	New York, NY	Ohio
MLMCI, LLC	New York, NY	Delaware
MLML Subdebt Holding LLC	New York, NY	Delaware
MLOC European Real Estate S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
MLOCG European Real Estate S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
MLP Nominees Pty Limited	Melbourne, Victoria, Australia	Australia
MLRBB SAS	Paris, France	France
MLRE II Incorporated	New York, NY	Delaware
MLWert 1 Sarl	Luxembourg, Luxembourg	Luxembourg
MLWert 2 Sarl	Luxembourg, Luxembourg	Luxembourg
MLWert 3 Sarl	Luxembourg, Luxembourg	Luxembourg
MLWert 4 Sarl	Luxembourg, Luxembourg	Luxembourg
MLWert Holdings Sarl	Luxembourg, Luxembourg	Luxembourg
MM3 HY Funding LLC	Charlotte, NC	Delaware
MMoney, LLC	San Francisco, CA	Delaware
MMovie Star Movie, LLC	San Francisco, CA	Delaware
MNB Smartcard Technologies, Inc.	Farmington Hills, MI	Michigan
Modena 2004-1 LLC	New York, NY	Delaware
Modena 2004-2 LLC	New York, NY	Delaware
Modena 2004 Business Trust	New York, NY	Nevada
Modena 2004 Holding LLC	New York, NY	Delaware
Modena 2004 Parent Trust	New York, NY	Delaware
Modena Newcorp, Inc.	New York, NY	Delaware
Mohawk River Funding II, L.L.C.	Houston, TX	Delaware
MOIL Corporation	Wilton, CT	Delaware
Mortgage Equity Conversion Asset Corporation	Wilmington, DE	Delaware
Mortgage Holdings Limited	London, U.K.	England
Mortgages 1 Limited	London, U.K.	England
Mortgages 2 Limited	London, U.K.	England
Mortgages 3 Limited	London, U.K.	England
Mortgages 4 Limited	London, U.K.	England
Mortgages 5 Limited	London, U.K.	England
Mortgages 6 Limited	London, U.K.	England
Mortgages 7 Limited	London, U.K.	England
Mortgages plc	London, U.K.	England
MRII Investments LLC	Charlotte, NC	Delaware
Muirfield Trading LLC	Charlotte, NC	Delaware
Multi-Family Housing Investment Fund I, LLC	Charlotte, NC	North Carolina
Murry Park, Inc.	Charlotte, NC	Delaware
Myers Park Trading LLC	Charlotte, NC	Delaware
N.B. (Bahamas) Ltd.	Nassau, Bahamas	Bahamas
N.Y. Nominees Limited	London, U.K.	England
NationsBanc Leasing & R.E. Corporation	Charlotte, NC	Delaware
NationsCredit Financial Services Corporation	Jacksonville, FL	North Carolina
NationsCredit Insurance Agency, Inc.	Jacksonville, FL	Pennsylvania
NB Capital Trust II	Charlotte, NC	Delaware
NB Capital Trust III	Charlotte, NC	Delaware

NB Capital Trust IV	Charlotte, NC	Delaware
NB Finance Lease, Inc.	San Francisco, CA	Delaware
NB Funding Company LLC	Charlotte, NC	Delaware
NB Holdings Corporation	Charlotte, NC	Delaware
NB International Finance B.V.	Amsterdam, The Netherlands	Netherlands
NB Partner Corp.	Charlotte, NC	Delaware
NBCDC Osborne, Inc.	Tampa, FL	Florida
NEBACO, INC.	Charlotte, NC	Nevada
Neptune 1, LLC	New York, NY	Delaware
NeSBIC Buy Out Fund Invest VII B.V.	Utrecht, The Netherlands	Netherlands
Nevis Investments Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Newark Lane Pty Limited	Charlotte, NC	Australia
Newcastle Capital Ireland Limited	Dublin, Ireland	Ireland
Newfound Bay Investments Limited	Luxembourg, Luxembourg	United Kingdom
Newfound Bay Limited	Luxembourg, Luxembourg	United Kingdom
Newland Lane Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Newport Insurance Company	Irvine, CA	Arizona
Newport Management Corporation	Irvine, CA	California
Nexstar Financial Corporation	Saint Charles, MO	Delaware
Nightingale Lane Pty Limited	Charlotte, NC	Australia
Nihonbashi Loan Service Corporation	Tokyo, Japan	Japan
Nihonbashi Residential Mortgage Corporation	Tokyo, Japan	Japan
Nippon Holdings, LLC	New York, NY	Delaware
Nippon Loans, LLC	New York, NY	Delaware
Nippon REO, LLC	New York, NY	Delaware
NMS Capital, L.P.	Chicago, IL	Delaware
NMS Investment Holdings, LLC	New York, NY	Delaware
NMS Services (Cayman) Inc.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
NMS Services, Inc.	New York, NY	Delaware
NMS/Oak VIII, LLC	San Francisco, CA	Delaware
Norris Associates, L.L.C.	Charlotte, NC	North Carolina
Norstar Venture Partners I	Providence, RI	Delaware
North Cove CDO II, LTD.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
North East Hillcroft, Inc.	Providence, RI	Texas
Northam Lane Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
NorthEnd Advisor Managing Member LLC	New York, NY	Delaware
NorthEnd Holding Company LLC	New York, NY	Delaware
NorthEnd Income Property Trust, Inc.	New York, NY	Maryland
NorthEnd Operating Partnership LP	New York, NY	Delaware
NorthEnd Realty Advisors LLC	New York, NY	Delaware
Northern Antelope Holdings, Inc.	New York, NY	Delaware
Northquay Investments Limited	London, U.K.	Cayman Islands
NorthRoad Capital Management LLC	New York, NY	New York
Norton Golf LLC	Boston, MA	Delaware
NPC Internacional S.A. de C.V.	Juarez, Mexico	Mexico
NYSCRF Pioneer Partnership Fund A, L.P.	Chicago, IL	Delaware
Oakland Funding No. 1 LLC	Charlotte, NC	Delaware
Oakland Funding No. 2 LLC	Charlotte, NC	Delaware
Oakridge Pines, LLC	Tampa, FL	Florida
O'Connor European Property Partners, L.P.	Wilmington, DE	Delaware
Odessa Park, Inc.	Charlotte, NC	Delaware
Oechsle International Advisors, LLC	Boston, MA	Delaware
Oldland Lane Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
One Bryant Park LLC	New York, NY	Delaware

Onslow Finance LLC	Charlotte, NC	Delaware
OOO Merrill Lynch Securities	Moscow, Russia	Russia
Operadora de Derivados Sanatander, S.A. de C.V.	Mexico City, Mexico	Mexico
Orix Funding LLC	Charlotte, NC	Delaware
Orta S.r.l.	Rome, Italy	Italy
Ortensia S.r.l.	Rome, Italy	Italy
Oshkosh/McNeilus Financial Services Partnership	Dodge Center, MN	California
OSP Funding LLC	Charlotte, NC	Delaware
Ostseeklinik Poel GmbH & Co. KG	Poel, Germany	Germany
Ostseeklinik Poel Verw. U. BetGes. mbH	Poel, Germany	Germany
Otter Lake Funding LLC	Charlotte, NC	Delaware
Pacesetter SBIC Fund, Inc.	Richardson, TX	Texas
Pacesetter/MVHC, Inc.	Richardson, TX	Texas
Pacific Dunes Trading LLC	Charlotte, NC	Delaware
Pacific Funding LLC	Charlotte, NC	Delaware
Panchshil Techpark Private Limited	Mumbai, India	India
Paneldeluxe Company Limited	Chester, England	England
Paradise Funding, Ltd.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Paradise Urban Investments, LLC	Dallas, TX	Arizona
Paramount Nominees Limited	London, U.K.	England
Pariter Solutions, LLC	San Francisco, CA	Delaware
Park Granada LLC	Calabasas, CA	Delaware
Park Monaco Inc.	Calabasas, CA	Delaware
Park Sienna LLC	Calabasas, CA	Delaware
Parkside Residential LLC	Washington, DC	District of Columbia
Parkside Senior Housing LLC	Washington, DC	District of Columbia
PC Dallas Holdings, LP	Dallas, TX	Texas
PC/Flowers I Inc.	New York, NY	Texas
PC/Flowers Inc.	New York, NY	Texas
Peapack Properties Corp.	New York, NY	Delaware
Pegasus Trading LLC	Charlotte, NC	Delaware
Peninsula Capital Corporation	Seoul, Korea	Korea
Perissa LLC	San Francisco, CA	Delaware
Persimmon Springs Funding LLC	Charlotte, NC	Delaware
PH Sentry Associates	Blue Bell, PA	Pennsylvania
Piccadilly Financing LLC	Charlotte, NC	Delaware
Pilot Financial Corp.	Blue Bell, PA	Pennsylvania
Pine Harbour Limited	London, U.K.	Cayman Islands
Pinehurst Trading, Inc.	Charlotte, NC	Delaware
Pinnacle Ridge Funding LLC	Charlotte, NC	Delaware
Pinot IV, LLC	New York, NY	Delaware
Pinyon Holdings, Inc.	Charlotte, NC	Delaware
Pinyon Park LLC	Charlotte, NC	Delaware
PJM Office Building, LLC	Baltimore, MD	Maryland
PJM Retail Center, LLC	Baltimore, MD	Maryland
Plano Partners	Charlotte, NC	Delaware
Pluto 1, LLC	New York, NY	Delaware
Poel Baltic Holding, S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
Poel Baltic Land, S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
Poplar Partners I	Charlotte, NC	Delaware
Poseidon Trading LLC	Charlotte, NC	Delaware
Powergate Associates Limited	Amsterdam, The Netherlands	United Kingdom
PPC, LLC	New York, NY	Colorado
PPM Monarch Bay Funding LLC	Charlotte, NC	Delaware

PPM Shadow Creek Funding LLC	Charlotte, NC	Delaware
PPM Spyglass Funding Trust	Wilmington, DE	Delaware
Premium Credit Limited	Epsom, United Kingdom	England
Premium Credit Receivables Limited	Epsom, United Kingdom	England
Premium Residence Tokutei Mokuteki Kaisha	Tokyo, Japan	Japan
Prime Asset Custody Transfers Limited	London, U.K.	United Kingdom
Princeton Administrators, L.P.	New York, NY	Delaware
Princeton Retirement Group, Inc., The	Atlanta, GA	Delaware
Princeton Services, Inc.	New York, NY	Delaware
PRLAP, Inc. (Alaska Corporation)	Juneau, AK	Alaska
PRLAP, Inc. (Missouri Corporation)	Clayton, MO	Missouri
PRLAP, Inc. (North Carolina Corporation)	Charlotte, NC	North Carolina
PRLAP, Inc. (Tennessee Corporation)	Knoxville, TN	Tennessee
PRLAP, Inc. (Texas Corporation)	Dallas, TX	Texas
PRLAP, Inc. (Virginia Corporation)	Richmond, VA	Virginia
PRLAP, Inc. (Washington Corporation)	Seattle, WA	Washington
Progress Capital Trust I	Blue Bell, PA	Delaware
Progress Capital Trust II	Blue Bell, PA	Delaware
Progress Capital Trust III	Blue Bell, PA	Delaware
Progress Capital Trust IV	Blue Bell, PA	Delaware
Progress Capital, Inc.	Boston, MA	Delaware
Progress Realty Advisors, Inc.	Blue Bell, PA	Pennsylvania
Prontco Pty Limited	Sydney, New South Wales, Australia	Australia
Propco Bridge LLC	New York, NY	Delaware
PT Merrill Lynch Indonesia	Jakarta, Indonesia	Indonesia
Puritan Mill, LLC	Atlanta, GA	Georgia
Pydna Corporation	San Francisco, CA	Delaware
Quality Properties Asset Management Company	Chicago, IL	Illinois
Raintree Trading LLC	Charlotte, NC	Delaware
Rameau S.A.R.L.	Paris, France	France
RCL Holdings LLC	Chicago, IL	Delaware
ReconTrust Company, National Association	Thousand Oaks, CA	United States of America
Red Fox Funding LLC	Charlotte, NC	Delaware
Red River Holdings Limited	Grand Cayman, Cayman Islands	Cayman Islands
Red River Park, Inc.	Charlotte, NC	Delaware
Reedy Creek Funding LLC	Charlotte, NC	Delaware
Regent Street II, Inc.	Charlotte, NC	Delaware
Relay Funding, LLC	Las Vegas, NV	Delaware
RepublicBank Insurance Agency, Inc.	Dallas, TX	Texas
Research Europe Limited	Chester, United Kingdom	United Kingdom
Richard III, LLC	New York, NY	Delaware
RIHT Life Insurance Company	Phoenix, AZ	Arizona
Ritchie Court M Corporation	Baltimore, MD	Maryland
Riverfalls Urban Investments, LLC	Dallas, TX	Texas
Riviera Funding LLC	Charlotte, NC	Delaware
Robertson Stephens Capital Markets Holdings Ltd.	Tel Aviv, Israel	Israel
Robertson Stephens Group, Inc.	San Francisco, CA	Delaware
Robertson Stephens International Holdings, Inc.	San Francisco, CA	Delaware
Robertson Stephens International, Ltd.	London, U.K.	United Kingdom
Robertson Stephens Israel Ltd.	Tel Aviv, Israel	Israel
Rock Harbour Funding LLC	Charlotte, NC	Delaware
Rockett, LLC, The	San Francisco, CA	Delaware
ROP Investments Limited	Grand Cayman, Cayman Islands	Cayman Islands
Rosebank Meadows Subdivision, LLC	Nashville, TN	Tennessee
Rosedale General Partner, LLC	Baltimore, MD	Maryland

Rosedale Terrace Limited Partnership	Baltimore, MD	Maryland
Roszel Advisors, LLC	Pennington, NJ	Delaware
Ruby Aircraft Leasing and Trading Limited	London, U.K.	United Kingdom
S.N.C. Nominees Limited	London, U.K.	England
Salem Lafayette Development LLC	Boston, MA	Massachusetts
Saturn 1, LLC	New York, NY	Delaware
Sauternes V, LLC	New York, NY	Delaware
Sawgrass Trading LLC	Charlotte, NC	Delaware
SB Holdings, Inc.	Charlotte, NC	Delaware
SCCP I GP, LLC	Baltimore, MD	Delaware
SCI Holdings Corporation	Baltimore, MD	Virginia
SCIC Properties, LLC	Baltimore, MD	Maryland
SCIC Riverwalk, LLC	Baltimore, MD	Maryland
SCIC San Antonio II, LLC	Baltimore, MD	Maryland
Sea Pines Funding LLC	Charlotte, NC	Delaware
Sealion Nominees Limited	London, U.K.	London, U.K.
Second Step Asset Management Company	Baltimore, MD	Maryland
Security Pacific Capital Leasing Corporation	San Francisco, CA	Delaware
Security Pacific EuroFinance Holdings, Inc.	San Francisco, CA	Delaware
Security Pacific EuroFinance, Inc.	San Francisco, CA	Delaware
Security Pacific Hong Kong Holdings Limited	Hong Kong, PRC	Hong Kong
Security Pacific Housing Services, Inc.	San Diego, CA	Delaware
Security Pacific Lease Finance (Europe) Inc.	San Francisco, CA	Delaware
Seguros Santander, S.A.	Mexico City, Mexico	Mexico
Seminole Funding LLC	Charlotte, NC	Delaware
Service-Wright Corporation	Washington, DC	Maryland
Servicios Corporativos Seguros Serfin, S.A. de C.V.	Mexico City, Mexico	Mexico
Seville Urban Investments, LLC	Dallas, TX	Texas
Siltex Properties Corp.	New York, NY	Delaware
Silver Peak REIT Holding Company, Inc.	Charlotte, NC	Delaware
Silver Peak REIT, Inc.	Charlotte, NC	Delaware
Silverado I BT	Charlotte, NC	Nevada
Silvertree Australian Investments Pty Limited	Sydney, New South Wales, Australia	Australia
Silverwood (FP) Limited	London, U.K.	Cayman Islands
Simmons Canyon Partners, LLC	New York, NY	Delaware
Sky Financial Securitization Corp. V	Dover, DE	Delaware
Sky Financial Securitization Corp. VI	Dover, DE	Delaware
Sky Financial Securitization Corp. VII	Dover, DE	Delaware
Smith Bros Limited	London, U.K.	England
Smith Bros Nominees Limited	London, U.K.	England
Smith Bros Participations Limited	London, U.K.	England
Smother, LLC	San Francisco, CA	Delaware
SNC Farringdon International (Holdings) BV	Amsterdam, The Netherlands	Netherlands
SNC International (Holdings) Limited	London, U.K.	England
SNC Securities Limited	London, U.K.	England
SNCFE Limited	Hong Kong, PRC	Hong Kong
Sofia II, LLC	New York, NY	Delaware
Solar Villa Investments Limited	Grand Cayman, Cayman Islands	Cayman Islands
Solimar Shipping Limited	London, U.K.	England & Wales
SOP M Corp.	Baltimore, MD	Maryland
South Charles Capital Partners I, L.P.	Baltimore, MD	Delaware
South Charles Investment Corporation	Baltimore, MD	Georgia
South Point Inc.	New York, NY	Delaware
Southam Lane Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Southern Dallas Development Fund, Inc.	Dallas, TX	Texas



Southport Investments, LLC	Charlotte, NC	North Carolina
Southquay Finance Limited	London, U.K.	Cayman Islands
Southstar Holding Corp.	New York, NY	Delaware
Southstar I, LLC	New York, NY	Delaware
Southstar II, LLC	New York, NY	Delaware
Southstar III, LLC	New York, NY	Delaware
Southstar IV, LLC	New York, NY	Delaware
Southstar V, LLC	New York, NY	Delaware
Sovran Capital Management Corporation	Richmond, VA	Virginia
Special Services Asset Management Company	Chicago, IL	Illinois
Spectrum Mortgage Company, Inc.	Princeton, NJ	New Jersey
Spring Valley Management LLC	Charlotte, NC	Delaware
Spruce Bay Limited	George Town, Grand Cayman, Cayman Is.	Cayman Islands
SPV Colombia I LLC	New York, NY	Delaware
SPV Colombia II LLC	New York, NY	Delaware
SRF 2000, Inc.	Charlotte, NC	Delaware
St. Johns Place, L.C.	Jacksonville, FL	Florida
Stamford Fidelity Realty Company, Inc., The	Fairfield, CT	Connecticut
Stamford Investors GP LLC	Dover, DE	Delaware
Stamford Investors LLC	Dover, DE	Delaware
Standard Federal Bank Community Development Corporation	Chicago, IL	Michigan
Stanton Road Housing LLC	Washington, DC	District of Columbia
Stanwich Loan Funding LLC	Charlotte, NC	Delaware
Steers Trust Series 2003-A	New York, NY	Delaware
Steers Trust Series 2003-C	New York, NY	Delaware
Steers Trust Series 2005-A	New York, NY	Delaware
Steers Trust Series 2005-B	New York, NY	Delaware
Steers Trust Series 2007-A	New York, NY	Delaware
Steppington/Dallas, Inc.	Dallas, TX	Texas
Sterling Farms Funding, Inc.	Las Vegas, NV	Delaware
Stonegate Meadows, L.P.	Kansas City, MO	Missouri
Stonelake ML Holdings LP	New York, NY	Delaware
Stonelake ML Infrastructure Partners LP	New York, NY	Delaware
Stourbridge Investments Limited	London, U.K.	England
Stowe Hill Limited	London, U.K.	England & Wales
Structured Access LLC	New York, NY	Delaware
Structured Asset Investment Notes LLC	Charlotte, NC	Delaware
Suhail Sarl	Luxembourg, Luxembourg	Luxembourg
Summit Capital Trust I	Wilmington, DE	Delaware
Summit Credit Life Insurance Company	Phoenix, AZ	Arizona
Sunset Hill Corporation	Baltimore, MD	Virginia
Sycamore Green, LLC	Charlotte, NC	North Carolina
Syndicated Properties Investments, LLC	Baltimore, MD	Delaware
Tabono Joint Venture, The	Dallas, TX	Texas
Tabono Partnership II, Ltd.	Dallas, TX	Texas
Taconic Trading LLC	Charlotte, NC	Delaware
Taiwan Hang Fung Asset Management Company Ltd.	Taipei, Taiwan	Taiwan
Talmon Investments S.a.r.l.	New York, NY	Luxembourg
Tarrill Limited	Godalming, Surrey, United Kingdom	England
Taurus Finance Inc.	New York, NY	Delaware
Teardrop Diamond, LLC	San Francisco, CA	Delaware
Temurgal HoldingCo AB	Geneva, Switzerland	Sweden
Temurgal InvestmentCo AB	Geneva, Switzerland	Sweden
Tidewater Pointe Funding LLC	Charlotte, NC	Delaware

Tikkurila Holdings II S.a.r.l.	Luxembourg, Luxembourg	Luxembourg
Tinfoil B.V.	Amsterdam, The Netherlands	Netherlands
TK Holdings I, LLC	New York, NY	Delaware
Tonopah, LLC	Charlotte, NC	Delaware
Topanga XI Inc.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Topanga XV Inc.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Topanga XX Inc.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Tops Capital Private Real Estate Investment Trust No. 2	Seoul, Korea	Korea
Town Park Associates, LLC	Miami, FL	Florida
Transistor Holdings, LLC	Las Vegas, NV	Delaware
Transistor, LLC	Las Vegas, NV	Delaware
Transit Holding, Inc.	San Francisco, CA	Delaware
Trenton Park Apartments Limited Partnership	Washington, DC	District of Columbia
Trenton Park Housing, LLC	Washington, DC	District of Columbia
Trifesol, S.L.	Madrid, Spain	Spain
TriSail Capital Corporation	Boston, MA	Rhode Island
TriSail Funding Corporation	Boston, MA	Delaware
TriSail/MMA GP, LLC	Boston, MA	Delaware
TriSail/MMA Realty Capital Partners I, L.P.	Boston, MA	Delaware
TriStar Communications, Inc.	San Francisco, CA	California
Tryon Assurance Company, Ltd.	Hamilton, Bermuda	Bermuda
Turtle Hill GP LLC	Kansas City, MO	Missouri
Turtle Hill Townhomes, L.P.	Kansas City, MO	Kansas
Twin Falls SL	Madrid, Spain	Spain
Two Broadway Incorporated	New York, NY	Delaware
Two Broadway V Incorporated	New York, NY	Delaware
Two Piccadilly Holdings, Inc.	Charlotte, NC	Delaware
Tyler Trading LLC	Charlotte, NC	Delaware
U.S. Trust Company of Delaware	Wilmington, DE	Delaware
U.S. Trust Hedge Fund Management, Inc.	Stamford, CT	North Carolina
UBOC Guaranteed Tax Credit Fund IX, L.L.C.	Walnut Creek, CA	California
UBOC Guaranteed Tax Credit Fund VIII, L.L.C.	Walnut Creek, CA	California
Ulysses Leasing Limited	St. Helier, Jersey, Channel Islands	Jersey
Union Realty and Securities Company	St. Louis, MO	Missouri
Urban Mecca I, LLC	Atlanta, GA	Georgia
V. Funds Limited	New York, NY	Cayman Islands
Valley Energy E&P Investments, LLC	Houston, TX	Delaware
Valley Energy Investment Fund International, L.P.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Valley Energy Investment Fund U.S., L.P.	Houston, TX	Delaware
Valley Energy Investment Holdings (Mauritius) Limited	Port Louis, Mauritius	Mauritius
Varese Holdings S.ar.l.	Luxembourg, Luxembourg	Luxembourg
Venco, B.V.	George Town, Grand Cayman, Cayman Is.	Cayman Islands
Vendrown Limited	Epsom, United Kingdom	England
Venus 1, LLC	New York, NY	Delaware
Vercoe Insurance Agency, Inc.	Pennington, NJ	Ohio
Verdot VI, LLC	New York, NY	Delaware
Vernon Park LLC	Charlotte, NC	Delaware
Victoria V, LLC	New York, NY	Delaware
Viewpointe Archive Services, L.L.C.	Charlotte, NC	Delaware
Villages Urban Investments, LLC	Phoenix, AZ	Arizona
Vine Street Lofts, L.P.	Kansas City, MO	Missouri
Vine Street Views, L.L.C.	Kansas City, MO	Missouri
WAM Acquisition GP, Inc.	Chicago, IL	Missouri
Washington Mill Lofts LLC	Boston, MA	Delaware
Washington Mill Manager LLC	Boston, MA	Massachusetts

Waterville Funding LLC	Charlotte, NC	Delaware
Wave Lending Holdings Limited	London, U.K.	England & Wales
Wave Lending Limited	London, U.K.	England
Wave Mortgages Limited	London, U.K.	England
Waverly Partners Inc.	New York, NY	Delaware
Waxhaw Park Investments LLC	Charlotte, NC	Delaware
WCH Limited Partnership	Dallas, TX	Texas
WD Georgia LLC	New York, NY	Georgia
WD South Carolina, LLC	New York, NY	South Carolina
Wellington Land Company, Inc.	Baltimore, MD	Delaware
Wellington Park/Lewisville, Inc.	Dallas, TX	Texas
Wendover Lane II, Inc.	Charlotte, NC	Delaware
Wendover Lane LLC	Charlotte, NC	Delaware
West Trade, LLC	Charlotte, NC	North Carolina
West Trade/Sycamore Street, LLC	Charlotte, NC	North Carolina
Westhill Investments Limited	St. Helier, Jersey, Channel Islands	Jersey
Westminster Properties, Inc.	Providence, RI	Delaware
Westquay Investments Limited	London, U.K.	Cayman Islands
Westside Acquisition, LLC	Charlotte, NC	North Carolina
WFC Air Inc.	New York, NY	Delaware
WH/DFW Land CO.	New York, NY	Texas
Whistling Pines Funding LLC	Charlotte, NC	Delaware
Whitby Capital Ireland Limited	Dublin, Ireland	Ireland
White Ridge Investments Limited	London, U.K.	England & Wales
White Rock Lane LLC	Charlotte, NC	Delaware
White Springs LLC	Charlotte, NC	Delaware
Wickliffe A Corp.	Baltimore, MD	Virginia
William V, LLC	New York, NY	Delaware
Willowbrook Funding LLC	Charlotte, NC	Delaware
Willows SA Holdings, LP	Dallas, TX	Texas
Wilshire Credit Corporation	Beaverton, OR	Nevada
Windeluxe Company Limited	Chester, England	United Kingdom
WM Developer LLC	Boston, MA	Massachusetts
WM Lofts LLC	Boston, MA	Massachusetts
WM Master Tenant LLC	Boston, MA	Massachusetts
Woori Marlin III ABS Co., Ltd.	Seoul, Korea	Korea
Woori SME First ABS Co., Ltd.	Seoul, Korea	Korea
Worthington Avenue, LLC	Charlotte, NC	North Carolina
WOW! Mortgages & Loans Limited	London, U.K.	England
Y.K. Tokyo Portfolio Investment	Tokyo, Japan	Japan
Yao Yong Real Property Incorporation	Taipei, Taiwan	Taiwan
Yellow Rose Investments Company	Charlotte, NC	Delaware
YK NB Estate	Tokyo, Japan	Japan
YK Poseidon Capital	Tokyo, Japan	Japan
Yong Tai Asset Management Company Limited	Taipei, Taiwan	Taiwan
YT West Tower Holdings Limited	Grand Cayman, Cayman Islands	Cayman Islands
ZAR Sovereign Bond Investments LP	New York, NY	Delaware
Zentac Productions, Inc.	San Francisco, CA	Delaware
Zeus Recovery Fund SA	Luxembourg, Luxembourg	Luxembourg
Zeus Trading LLC	Charlotte, NC	Delaware

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in:

- the Registration Statements on Form S-3 (Nos. 333-158663; 333-155381; 333-152418; 333-133852; 333-112708; 333-123714; 333-70984; 333-15375; 333-18273; 333-97157; 333-97197; 333-83503; 333-07229; 333-51367; 033-57533; 033-30717; 033-49881; 333-13811; 333-47222; 333-64450; and 333-104151);
- the Registration Statements on Form S-8 (Nos. 333-163002; 333-157085; 333-133566; 333-121513; 333-69849; 333-81810; 333-53664; 333-102043; 333-102852; 333-65209; 033-45279; 002-80406; 333-02875; 033-60695; and 333-58657);
- and the Post-Effective Amendments on Form S-8 to Registration Statements on Form S-4 (Nos. 333-153771; 333-149204; 333-127124; 333-110924; 033-43125; 033-55145; 033-63351; 033-62069; 033-62208; 333-16189; 333-60553; and 333-40515)

of Bank of America Corporation of our report dated February 26, 2010 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

*PricewaterhouseCoopers LLP*

Charlotte, North Carolina  
February 26, 2010

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each of Bank of America Corporation and the several undersigned officers and directors whose signatures appear below, hereby makes, constitutes and appoints Teresa M. Brenner, Alice A. Herald and Edward P. O'Keefe, and each of them acting individually, its, his and her true and lawful attorneys with power to act without any other and with full power of substitution, to prepare, execute, deliver and file in its, his and her name and on its, his and her behalf, and in each of the undersigned officer's and director's capacity or capacities as shown below, an Annual Report on Form 10-K for the year ended December 31, 2009, and all exhibits thereto and all documents in support thereof or supplemental thereto, and any and all amendments or supplements to the foregoing, hereby ratifying and confirming all acts and things which said attorneys or attorney might do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, Bank of America Corporation has caused this power of attorney to be signed on its behalf, and each of the undersigned officers and directors, in the capacity or capacities noted, has hereunto set his or her hand as of the date indicated below.

## BANK OF AMERICA CORPORATION

By: /s/ Brian T. Moynihan  
 Brian T. Moynihan  
 Chief Executive Officer and President

Dated: February 26, 2010

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Brian T. Moynihan</u> Brian T. Moynihan	Chief Executive Officer, President and Director (Principal Executive Officer)	February 26, 2010
<u>/s/ Neil A. Cotty</u> Neil A. Cotty	Interim Chief Financial officer and Chief Accounting Officer (Principal Financial Officer and Principal Accounting Officer)	February 26, 2010
<u>/s/ Susan S. Bies</u> Susan S. Bies	Director	February 26, 2010
<u>/s/ William P. Boardman</u> William P. Boardman	Director	February 26, 2010
<u>/s/ Frank P. Bramble, Sr.</u> Frank P. Bramble, Sr.	Director	February 26, 2010
<u>/s/ Virgis W. Colbert</u> Virgis W. Colbert	Director	February 26, 2010
<u>/s/ Charles K. Gifford</u> Charles K. Gifford	Director	February 26, 2010
<u>/s/ Charles O. Holliday, Jr.</u> Charles O. Holliday, Jr.	Director	February 26, 2010
<u>/s/ D. Paul Jones, Jr.</u> D. Paul Jones, Jr.	Director	February 26, 2010
<u>/s/ Monica C. Lozano</u> Monica C. Lozano	Director	February 26, 2010
<u>/s/ Walter E. Massey</u> Walter E. Massey	Director	February 26, 2010
<u>/s/ Thomas J. May</u> Thomas J. May	Director	February 26, 2010
<u>/s/ Donald E. Powell</u> Donald E. Powell	Director	February 26, 2010
<u>/s/ Charles O. Rossotti</u> Charles O. Rossotti	Director	February 26, 2010
<u>/s/ Thomas M. Ryan</u> Thomas M. Ryan	Director	February 26, 2010
<u>/s/ Robert W. Scully</u> Robert W. Scully	Director	February 26, 2010

**BANK OF AMERICA CORPORATION**

**BOARD OF DIRECTORS**

**RESOLUTIONS**

**January 27, 2010**

**Annual Report on Form 10-K**

**FURTHER RESOLVED, that Teresa M. Brenner, Alice A. Herald and Edward P. O’Keefe be, and each of them with full power to act without the other hereby is, authorized and empowered to prepare, execute, deliver and file the 2009 Form 10-K and any amendment or amendments thereto on behalf of and as attorneys for the Corporation and on behalf of and as attorneys for any of the following: the principal executive officer, the principal financial officer, the principal accounting officer, and any other officer of the Corporation; and be it**

**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF ASSISTANT 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 (the “Corporation”), do hereby certify that the foregoing is a true and correct copy of the resolutions duly adopted by the Board of Directors of the Corporation at a meeting of the Board of Directors held on January 27, 2010, at which meeting a quorum was present and acting throughout and that said resolutions are in full force and effect and have not been amended or rescinded as of the date hereof.

IN WITNESS WHEREOF, I have hereupon set my hand and affixed the seal of the Corporation as of February 25, 2010.

(CORPORATE SEAL)

/s/ ALLISON L. GILLIAM  
Assistant Secretary

**Certification Pursuant to Section 302  
of the Sarbanes-Oxley Act of 2002  
for the Chief Executive Officer**

I, Brian T. Moynihan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Bank of America Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2010

/s/ Brian T. Moynihan  
\_\_\_\_\_  
Brian T. Moynihan  
Chief Executive Officer



**Certification Pursuant to Section 302  
of the Sarbanes-Oxley Act of 2002  
for the Interim Chief Financial Officer**

I, Neil Cotty, certify that:

1. I have reviewed this Annual Report on Form 10-K of Bank of America Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is

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reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2010

/s/ Neil Cotty

Neil Cotty

Interim Chief Financial Officer

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002

I, Brian T. Moynihan, state and attest that:

- (1) I am the Chief Executive Officer of Bank of America Corporation (the "Registrant").
- (2) I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that
  - the Annual Report on Form 10-K of the Registrant for the year ended December 31, 2009 (the "periodic report") containing financial statements fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
  - the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the Registrant as of, and for, the periods presented.

Name: /s/ Brian T. Moynihan  
Title: Chief Executive Officer  
Date: February 26, 2010

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002

I, Neil A. Cotty, state and attest that:

- (1) I am the Interim Chief Financial Officer and Chief Accounting Officer of Bank of America Corporation (the "Registrant").
- (2) I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that
  - The Annual Report on Form 10-K of the Registrant for the year ended December 31, 2009 (the "periodic report") containing financial statements fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
  - the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the Registrant as of, and for, the periods presented.

Name: /s/ Neil A. Cotty  
Title: Interim Chief Financial Officer and Chief Accounting Officer  
Date: February 26, 2010